

9-14-2000

## Meeting Notes 2000-09-14

Joint Policy Advisory Committee on Transportation

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**METRO**

**MEETING: JOINT POLICY ADVISORY COMMITTEE ON TRANSPORTATION**

**DATE:** September 14, 2000

**DAY:** Thursday

**TIME:** 7:30 a.m.

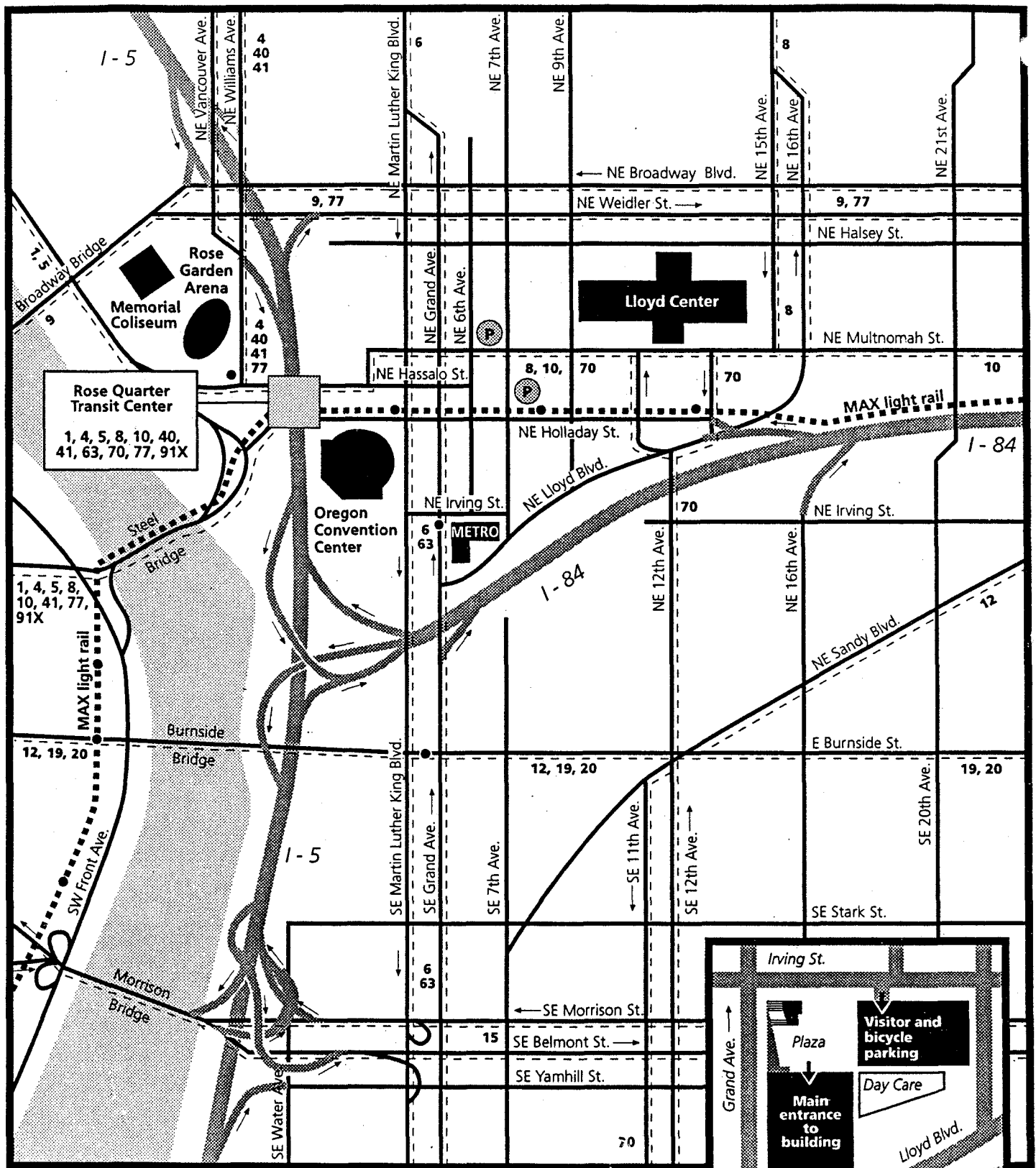
**PLACE:** Metro Conference Room 370A & B

1. Call to Order and Declaration of a Quorum.
- \* 2. Minutes of August 10, 2000, JPACT meeting – APPROVAL REQUESTED
- \* 3. RESOLUTION NO. 00-2980A – For the Purpose of Amending the Metropolitan Transportation Improvement Program to Include Section 5309 Funds to Construct a New Milwaukie Transit Center – APPROVAL REQUESTED – Mike Hoglund
- \* 4. Comments on Draft Federal Rules for Metropolitan Planning, NEPA, and Intelligent Transportation Systems – APPROVAL REQUESTED – Mike Hoglund
- # 5. Community Media Project (OPB) – INFORMATIONAL – Mike Hoglund/ Pam Peck
- \* 6. RTP Conformity Approach and Schedule – INFORMATIONAL – Mike Hoglund
7. Adjourn.

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\* Material enclosed.

# Available at Meeting.



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## MEETING REPORT

DATE OF MEETING: August 10, 2000

GROUP/SUBJECT: **Joint Policy Advisory Committee on Transportation (JPACT)**

MEMBERS PRESENT:

Jon Kvistad, Chair  
Grace Crunican  
Rob Drake  
Andy Ginsburg  
Fred Hansen  
Sharron Kelley  
Bill Kennemer  
Jim Kight  
Dave Lohman  
Rod Monroe  
Royce Pollard  
Karl Rohde  
Roy Rogers  
Don Wagner  
Ed Washington

AFFILIATION:

Metro  
Oregon Department of Transportation (ODOT)  
City of Beaverton, representing Cities of Washington County  
Oregon Department of Environmental Quality  
Tri-Met  
Multnomah County  
Clackamas County  
City of Troutdale, representing Cities of Multnomah County  
Port of Portland  
Metro  
City of Vancouver  
City of Lake Oswego, representing Cities of Clackamas County  
Washington County  
Washington State Department of Transportation (WSDOT)  
Metro

GUESTS PRESENT:

Bill Atherton  
David Bragdon  
Susan McLain  
Steve Dotterer  
John Rosenberger  
Kay Van Sickel  
Bernie Bottomly  
Lynn Peterson  
John Rist  
Jim Howell  
Dave Williams  
Paul Silver  
Ross Williams  
Rex Burkholder  
Betty Atteberry  
Frank Angelo  
Ted Spence

AFFILIATION:

Metro Council  
Presiding Officer, Metro Council  
Metro Council  
City of Portland  
Washington County  
Oregon Department of Transportation (ODOT)  
Tri-Met  
Tri-Met  
Clackamas County  
Association of Oregon Rail & Transit Advocates (AORTA)  
Oregon Department of Transportation (ODOT)  
City of Wilsonville  
Citizens for Sensible Transportation  
Metro Councilor Elect  
Westside Economic Alliance  
Angelo Eaton & Associates  
Citizen

MEDIA:

Bill Stewart                      The Oregonian



STAFF:

Andy Cotugno  
Bill Barber  
Ted Leybold  
Jeanna Cernazanu

Mike Hoglund  
Kim White  
Gina Whitehill-Baziuk  
Rooney Barker

Tom Kloster  
John Ottomanelli  
Chris Deffebach

SUMMARY:

The meeting was called to order at 7:44 a.m., and Chair Jon Kvistad declared a quorum.

MEETING REPORT:

Action taken: Councilor Rohde, with a second by Mayor Drake, moved for approval of the meeting report of July 13, 2000. Mayor Drake requested, later in the meeting, that his title be corrected on p. 3 of this report from Major to Mayor. The motion passed unanimously.

ORDINANCE NO. 00-869A – FOR THE PURPOSE OF ADOPTING THE 2000 REGIONAL TRANSPORTATION PLAN; AMENDING ORDINANCE NO. 96-647C AND ORDINANCE NO 97-715B

and

RESOLUTION NO. 00-2969B – FOR THE PURPOSE OF ADOPTING THE 2000 REGIONAL TRANSPORTATION PLAN AS THE FEDERAL METROPOLITAN TRANSPORTATION PLAN

Mr. Cotugno explained that adoption of both instruments was necessary in that the ordinance meets the State of Oregon Transportation Planning Rule (TPR) requirements, while the resolution meets the federal requirements and focuses on the fiscally constrained part of the system. He reminded the committee that at their July 13<sup>th</sup> meeting they went through all the comments and amendments, and that they had approved a variety of amendments. The action requested today would be to adopt the two instruments as an amendment. As a result of last month's discussion, Dave Lohman had introduced an amendment to the resolution regarding further consultation with the business community and that amendment is incorporated into the resolution. Regarding the first draft of the findings associated with the resolution, Mr. Cotugno said they would be brought back before the committee in the fall when the air quality conformity is adopted, and then will be forwarded on to the federal government. The ordinance findings which address the Transportation Planning Rule for the state are in Exhibit E and include two attachments referencing the I-5/99W Connector Exception Findings and the Sunrise Corridor Exception Findings. The ordinance findings also will continue to evolve until the process is concluded.

Following last month's discussion regarding consultations with the business community, Mr. Cotugno said he and Presiding Officer Bragdon, Executive Officer Burton and Councilor McLain met with members of the Westside Business Coalition on Transportation. A copy of a letter sent to these individuals was shared with the committee as well as their response. The message from the Coalition is quite similar to the discussion of this committee in that the biggest concern is lack of funds and resulting consequences. The Coalition said they are eager to continue to work with us to understand and help improve the situation, and they have demonstrated a fair amount of commitment to their issues.

Commissioner Rogers thanked the committee for the 30-day delay on this resolution, which allowed for constructive discussion to occur. He also thanked the Westside Business Coalition and the Westside Economic Alliance for the role they played in crafting their comments and capturing the essence of the concerns. He said he was appreciative of the amendment to the resolution that seemingly captured some of the issue. On a majority vote of the Washington County Commission, Commissioner Rogers said he was instructed to vote no on this resolution. The no vote would center on three issues:

1. There's a continued interest in having more dialog with the business community to fashion and craft a plan.
2. There's still concern about the funding gap and solutions to it; perhaps some additional time needs to be taken to address that.
3. A concern of the Washington County Commission Chair is that there seems to be a bifurcation in our thinking that we're emphasizing land use issues in Clackamas County and all the industrial issues are in Washington County, creating infrastructure problems for both counties. He's looking at how demand reduction is being done and how this major infrastructure problem that's going to occur as we implement the plan in the region is going to be dealt with.

Commissioner Rogers said he appreciated all the thoughtfulness of this committee and thanked them again for the 30-day delay.

Frank Angelo said he felt the letter was self-explanatory. He appreciated the Metro Councilors, Executive Officer, and Mr. Cotugno coming out to meet with them because he thought it was a sincere expression from the businesses on the west side. He said he's looking forward to working with Metro and their partners in finding solutions.

Mayor Drake agreed that the business community concerns are appreciated and this has been a good wake up call, not just in Washington County. Freight needs to move around the region, he said, not just in Washington County. He invited the Westside Business Coalition to expand their effort to the region. He then said he supports the RTP, recognizing that Metro has reached out and that he appreciates Metro's Executive Officer, Presiding Officer and Councilor McLain attending the initial meeting with the Coalition. He hoped this would be one of many meetings in this direction, and he will take a personal interest in how it goes from here. The business community has a moral obligation in helping to solve these problems.

Commissioner Kennemer said Clackamas County was very supportive of Washington County's concerns regarding bifurcation creating problems in infrastructure. The real issue, he said, is that there are good plans with no funding. The Washington County business community interest excites him, and Clackamas County is looking to working with their businesses as well, as Mayor Drake suggested. He said he supports Dick Reiten's and Tom Brian's efforts in the Transportation Summit 2000.

Fred Hansen asked for clarification that the ordinance be approved for adoption, and that Exhibit E is documentation describing what's been adopted and how we comply.

Grace Crunican said a good deal of work has been done on the RTP and the conclusion of that work will be adopted today, and it is the right conclusion, and yet it's a work in progress. She said she understands the business community's concerns and questions and the contradictions, and why they've been raised. The business community needs to be involved from now on. Her Commission and Department are very concerned that we do work together on how to piece together the priorities while addressing the overall prosperity and the livability issues with the lack of infrastructure funding. She thanked everyone for the five years of work put in on this plan.

Dave Lohman added that, from the Port of Portland's perspective the Westside Business Coalition has raised some very key issues and the Port is very sympathetic with the position they're taking on these. Secondly, the Port believes we should all be encouraged by their active, constructive participation and we should be looking for ways to encourage more constructive and active involvement. Mr. Lohman then questioned whether staff had the resources to carry out the work outlined on p. 3 of the resolution.

Chair Kvistad agreed that a big problem is funding, but that we won't be able to accomplish our regional goals unless we look at the way transportation works, as urban form follows infrastructure. This will move us along that track, so he said he will support it but is also very aware of where we've been for a long time on the west side and in Clack County.

At that point, Chair Kvistad brought forward Metro Councilor Bill Atherton's proposed amendment regarding Noise Standards, which was distributed. Councilor Atherton gave a brief summary of the proposed amendment. Chair Kvistad said that the RTP is an ongoing document and didn't know if this amendment would be made at this point. He then asked for a motion on the proposed amendment. Commissioner Kennemer suggested the Transportation Planning Committee look at it, that it's an immensely complicated issue, and that might be the more appropriate place for it. Ms. Crunican said she agreed it should go through staff first, and that it was a little late to bring forward although it's a legitimate issue. She suggested that there be some technical expertise involved in examining it before it comes to this committee.

Councilor Monroe said it had been before the Transportation Planning Committee August 8<sup>th</sup>, and they did not take action because they felt the RTP was too far along in the process to amend before adoption. The Transportation Planning Committee told Councilor Atherton that he would

have an opportunity to present this amendment at JPACT, and that it would be appropriate to review it after the RTP was adopted because the RTP can be amended in the future.

Mayor Drake appreciated the proposed amendment being brought forward since, coming from a local government, he understood noise issues. His concern was, while agreeing it's a livability issue, what would be the trade-offs.

Sharron Kelley thanked Councilor Atherton for bringing this up because it is a quality of life issue and will continue to be a significant challenge for all transportation providers and will need complex technical understanding. She agreed that there was a need for sensitivity but that it needed to be talked about at both the local and regional levels.

Andy Ginsburg agreed that this is an important livability issue that needs to be addressed. The DEQ doesn't have a noise program. At this point, he said, that falls to the locals. He also agreed that if an absolute standard is set it could be pretty heavy, that we more design options need to be looked at, and taking noise into consideration in various ways as we develop plans. It does make sense that it be looked at carefully before action is taken here.

Fred Hansen observed that this was being spoken of as a nuisance issue, and agreed that increased noise levels do contribute to stress, but cautioned that we need to be aware that there are broader issues than just nuisance and livability. Issues such as noise barriers may be appropriate in some places, but may disturb the urban landscape in others. He said he assumes this will be taken into consideration.

It was agreed that this proposed amendment would go to technical staff for preliminary work to begin.

Action taken: Commissioner Kennemer moved, with a second by Councilor Rohde, to approve Ordinance No. 00-869A. Voting for approval: Fred Hansen, Rod Monroe, Sharron Kelley, Karl Rohde, Grace Crunican, Royce Pollard, Dave Lohman, Jim Kight, Don Wagner, Andy Ginsburg, Ed Washington, Bill Kennemer, Rob Drake. Voting against approval: Roy Rogers. The motion passed.

Action taken: Councilor Washington moved, with a second by Mayor Drake, to approve Resolution No. 00-2969B. Voting for approval: Fred Hansen, Rod Monroe, Sharron Kelley, Karl Rohde, Grace Crunican, Royce Pollard, Dave Lohman, Jim Kight, Don Wagner, Andy Ginsburg, Ed Washington, Bill Kennemer, Rob Drake. Commissioner Rogers abstained. The motion passed.

Councilor Rohde took a moment to thank and compliment Metro for their five years of work at all levels on the RTP. Chair Kvistad added his thanks to the staff as well.

## LETTER OF ENDORSEMENT FOR ODOT'S I-5/DELTA PARK PRELIMINARY ENGINEERING GRANT APPLICATION FOR FHWA BORDERS AND CORRIDORS FUNDING

Dave Williams explained the distributed draft letter ODOT had written in the hope that JPACT and the Southwest Washington Regional Transportation Council (SW RTC) would send it to the congressional delegation. Ms. Crunican said the letter should be sent, but needs to be beefed up to make it clear in both the beginning and closing line that we're asking for the money. Mr. Williams said this letter is only for the Preliminary Engineering part of the project.

Mayor Pollard, in support, said this would put a stamp of reality on the bi-state relationship. He said his only comment might be if in the third paragraph something was added about the intended HOV operation, that it may strengthen the letter. No one objected to that suggestion.

Councilor Monroe, regarding Mayor Pollard's comment, thought it would be well to send this letter to the Washington delegation as well as Oregon. Ms. Crunican agreed that it was wise to show some progress in that area, and that we wouldn't want that to go unnoticed.

Action taken: Ms. Crunican moved, with a second by Commissioner Kennemer, to approve the letter of endorsement, with revisions, be sent to the Washington and Oregon delegations.

Chair Kvistad announced the August 29<sup>th</sup> scheduled public hearing on the Wilsonville to Beaverton Commuter Rail project, per the distributed notice.

Chair Kvistad brought up an earlier conversation with Mr. Cotugno and Mr. Hansen regarding the Canadian-manufactured Talgo train cars. JPACT may send a letter of endorsement and support for continued use of these vehicles. Ms. Crunican said she thought there may be a competition issue what with Bombardier having been the major provider of most of the rail cars used in this country. Perhaps they thought Talgo wasn't going to provide much competition and so Talgo was allowed to get started on a procedure the Federal Railway Administration used that allowed them to have some experimental time. Now that Talgo has had the time, she continued, Bombardier wants to assert certain crash standards to those vehicles. The difference in approach is being dealt with by the Federal Railway Administration now. Ms. Crunican said she thought it would not be inappropriate for JPACT to send a letter. ODOT is working very hard to maintain their Talgo investment. Talgo was the choice from Washington State, and Oregon has gone along with it. It's an institutional battle on safety standards back in Washington, D.C.

Don Wagner said he's happy to see Oregon buying the second Talgo set. He agreed with Ms. Crunican that this is a national issue, not just a local one. WSDOT supports Talgo, but they don't know how effective that will be. A second set of Talgo cars is being built in the State of Washington now. He hasn't talked with his Commission about this to know their stance, but he will prepare briefing for this body and the RTC as well as the Bi-State Committee as to what position the State of Washington will take on this.

Chair Kvistad said it might be helpful to send a letter and he asked for a motion to do that. Fred Hansen said there were probably a fair number of players involved in this and he would be happy to support a letter, but asked if staff would coordinate with WSDOT, ODOT and the Governors' offices. Secondly, he suggested a few sentences to use in said letter that he felt would be appropriate: Safe, efficient and effective multi-modal transportation is key to the economic lifeblood and quality of life considerations of our region. The Talgo trains have provided a key component of this multi-modal approach to transportation. It is our understanding that the waiver granted to Talgo duly considered the safe operation of this train, including its track worthiness. Unless there is new information calling into question its safety, we request that the waiver and use of this train continue. Mr. Hansen suggested that it be made clear that obviously we're concerned about safety, but unless there's new information, we request the operation of this equipment be approved under the rules that existed at the time the trains were manufactured.

Mayor Pollard said the RTC will deal with it in a similar way, but wondered what the value would be of another partnership letter. Chair Kvistad says it's topical, and having a statement from JPACT in writing – assuming there is approval of that today – will show that continuous support.

Action taken: Councilor Rohde moved, with a second by Mayor Drake, to send a letter of support, which will be crafted based in the discussion here and with ODOT and WSDOT concurrence. Ms. Crunican said the Railway Administration is where it should be sent, and to the congressional delegations as well. She suggested separate letters to the delegations. The motion passed unanimously.

Chair Kvistad reminded the committee that the way the regular JPACT meeting room is set up, it's difficult for some people to hear the discussions and votes, and that the members need to be aware of this and speak loud enough to be heard.

There being no further business, the meeting adjourned at 8:40 a.m.

Respectfully submitted,

Rooney Barker  
Recording Secretary

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE )  
METROPOLITAN TRANSPORTATION )  
IMPROVEMENT PROGRAM TO INCLUDE )  
SECTION 5309 FUNDS TO CONSTRUCT A NEW )  
MILWAUKIE TRANSIT CENTER )

RESOLUTION NO. 00-2980A |

Introduced by  
Councilor Jon Kvistad,  
JPACT Chair

WHEREAS, Tri-Met presently operates an on-street transit center in downtown  
Milwaukie; and

WHEREAS, Operation of the transit center causes congestion of the local street system  
and lacks appropriate amenities; and

WHEREAS, Planned implementation of rapid bus service and/or yet to be determined  
~~fixed guideway services~~ high-capacity transit service in the McLoughlin Corridor would  
exacerbate conditions at the transit center; and

WHEREAS, Tri-Met was appropriated Section 5309 (formerly Section 3) New Start  
discretionary funding for construction of the PSU Transit Center in FY 97; and

WHEREAS, Tri-Met has built the PSU Transit Center and has approximately \$1.5  
million of the grant left unexpended; and

WHEREAS, FTA Region X staff have concurred that the funds are available for  
construction of a transit center other than the PSU Transit Center; and

WHEREAS, Tri-Met anticipates appropriations of up to an additional \$2.5 million of  
Section 5309 funds in FY 01 for construction of a Milwaukie Transit Center; and

WHEREAS, Tri-Met has requested amendment of the Metropolitan Transportation  
Improvement Program (MTIP) to program \$4.0 million of Section 5309 funds for relocation of  
the Milwaukie Transit Center to an off-street location one block north of the current center; and

WHEREAS, Tri-Met stands ready to contribute general funds to the project should  
appropriations fall below those needed to complete the project; and

WHEREAS, Relocation of transit center operations has been anticipated and is included in the currently conformed regional transportation network quantitative analysis; and

WHEREAS, The proposed Transit Center would not preclude any transit service options presently being considered in or through Milwaukie; now, therefore

BE IT RESOLVED:

1. The Metropolitan Transportation Improvement Program (MTIP) is amended to authorize obligation of \$4.0 million of section 5309 funds, composed of \$1.5 million of appropriated funds and ~~\$2.5 million of prospective~~ \$650,000 of obligated funds, and \$1.85 million of anticipated funds, for construction of the Milwaukie Transit Center.

2. Metro staff are authorized to cooperate with Tri-Met and ODOT staff to make such other administrative adjustments as needed to program the funds by phase of work an year as may be needed.

ADOPTED by the Metro Council this \_\_\_\_\_, day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
David Bragdon, Presiding Officer

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

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8/23/00



FOR THE PURPOSE OF AMENDING THE METROPOLITAN TRANSPORTATION  
IMPROVEMENT PROGRAM TO INCLUDE SECTION 5309 FUNDS TO CONSTRUCT A  
NEW MILWAUKIE TRANSIT CENTER

Date: August 23, 2000

Presented by: Andrew C. Cotugno

PROPOSED ACTION

This resolution would approve amendment of the MTIP to authorize obligation of \$1.5 million unexpended Section 5309 Discretionary transit funds for construction of the Milwaukie Transit Center. It would authorize obligation of up to an additional \$2.5 million of Section 5309 funds in the event Tri-Met is successful in securing additional appropriations in the FY 2001 congressional authorization bill. The project, with local match, totals \$5 million.

EXISTING LEGISLATION

An improved Milwaukie Transit Center is consistent with both the currently approved 1995 RTP and the 2000 RTP update for which federal approval remains pending.

BACKGROUND AND ANALYSIS

In FY 97 the region was appropriated funding to construct the PSU Transit Center. The project is complete and \$1.5 million remains unexpended. The FTA has concurred with Tri-Met's proposal to transfer the balance of the funds to construct an improved Milwaukie Transit Center. Tri-Met anticipates-received an appropriation of an additional \$650,000 in FY 04-00 and anticipates additional appropriations in future years. The complete transit center that is envisioned would cost approximately \$5.0 million (\$4.0 million federal/\$1.0 million local match). Tri-Met has requested programming of the complete federal share so that any appropriations will be accounted for. This is consistent with FTA's past interpretations of MTIP financial constraint demonstrations when programming projects reliant on multi-year appropriations, such as the Westside and Interstate MAX extension projects.

The scale of the complete project exceeds current demands. It is sized to accommodate increased bus loadings that would result from implementation of a rapid bus program in the South Corridor, and/or any other high-capacity transit system envisioned for the corridor. ~~Consequently, current demand could be met by a first phase project.~~ Assuming actual funds in hand of \$2.15 million, Tri-Met will contribute whatever general funding is needed to complete a first phase project able to accommodate current demands. The final \$1.85 million would be appropriated at a later date, or would be made up from a combination of general funds, or, conceivably, a request for regional flexible funds such as those earmarked for transit improvements in the South Corridor.

The existing transit center is an on-street facility, which creates many safety and circulation problems in the downtown district. The proposed facility would relocate the center one block north into the parking lot of the former Safeway store that has been converted to a community center. The transit center would also be adjacent to the Ledding Library. Attachment 1 provides additional information about the proposed project. Figure 1 (in Attachment 1) shows a tentative site plan.

The project is included in the transit system network used to model both the 1995 and 2000 RTP financially constrained networks. The 1995 network is currently conformed to the State (Air Quality) Implementation Plan. Conformity of the 2000 RTP is pending.

TW:rmb

Attachment: Attachment 1

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## MILWAUKIE TRANSIT CENTER RELOCATION PROJECT

### Project Description

Tri-Met and the City of Milwaukie are jointly planning a new transit center on the northeast corner of SE Main Street and SE Harrison Street. The transit center would be a key component of both an effort by Tri-Met to improve bus service to and from Milwaukie and vicinity and the Downtown Milwaukie Development Plan. The project is located one block north of the existing on-street transit center, on a site currently occupied by a building formerly housing a Safeway grocery store and the associated 120-space parking lot. The city currently uses the lot to provide paid, public parking. This site is attractive for transit center use because it is adjacent to and easily accessible and visible from arterial streets, level, well drained and served by existing utilities.

As shown in Figure 1, the proposed transit center would provide 14 bus loading/layover pads (including spare bus bays), passenger loading platforms with shelters and other passenger amenities, paved surface on which buses would operate and driveway connections to SE Main and SE Harrison Streets within the off-street site. Associated with the off-street facility would be two on-street bus stop zones: one on the east side of SE Main Street just south of the Main Street driveway for northbound trunkline buses; and one for southbound trunkline buses on the west side of SE Main Street across from the Main Street driveway. Both bus stop zones, on curb extensions, would be long enough for two 40-foot buses. Kiss-and-ride drop-off zones would be sought on both sides of SE Main Street between the bus zones and SE Harrison Street. There would be no park-and-ride access provided at this location. A park-and-ride lot currently exists less than ½ -mile to the north. Other park-and-ride facilities are planned south and east of the proposed transit center.

The facility would be designed to enhance the downtown area with cost-effective use of architectural features and finishes. Landscaping would be provided consistent with city code requirements, while minimizing continuing maintenance requirements and costs.

Beyond the proposed site, the relocated transit center would allow consolidation of bus movements through downtown Milwaukie onto three streets (SE Main Street, SE Harrison Street and SE 21<sup>st</sup> Avenue) saving both bus rider travel time and bus operating costs. Downtown Milwaukie would continue to have strong, all-day transit access and internal circulation. The transit center is anticipated to accommodate improved transit service along SE McLoughlin Boulevard and between Milwaukie and the Clackamas Regional Center planned for implementation within the next five years.

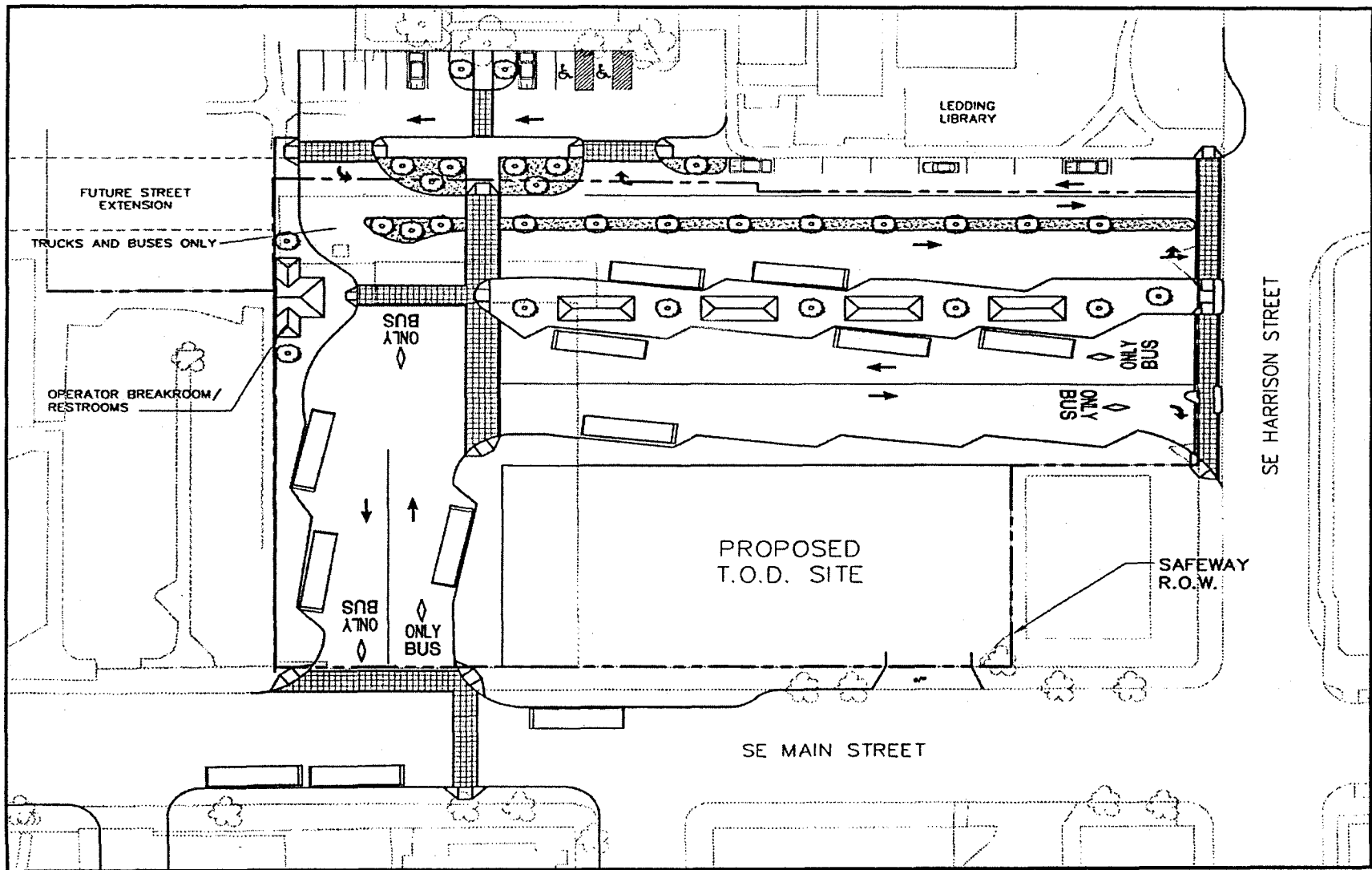
Transit passenger transfer movements would be accommodated off-street, rather than in mixed traffic, except for transfers to and from southbound trunkline buses. As mentioned above, these buses would serve a bus stop zone located across SE Main Street from the transit center proper. A pedestrian crosswalk would be provided across SE Main Street to support these transfers. The crosswalk would be striped and signed for pedestrian safety. They will be made even more distinctive (e.g., with scored concrete) as required by the Milwaukie Downtown and Riverfront Plan. The proposed transit center would simplify bus transfers, reduce auto/bus/pedestrian conflicts, provide amenities and transit customer information and improve pedestrian system connectivity in the vicinity of City Hall and the Ledding Library.

The existing, on-street transit center serves nearly 4,700 transit patrons daily. However, it provides few transit amenities and offers no opportunity to accommodate additional bus lines without converting additional curb space in the immediate vicinity of the existing collection of bus stop zones to bus stop use. This would reduce the number of on-street parking spaces and loading zones. Expansion of the existing, on-street transit center would spread it out further. The result would be longer walks, more dispersed customer information and increased street crossings further compromising the ease of use by transferring transit riders; impacts to adjoining land uses and exacerbation of localized traffic congestion.

TW:rmb

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FIGURE 1



*Mayor Carolyn Tomei's comments  
to JPACT on 9-14-00*

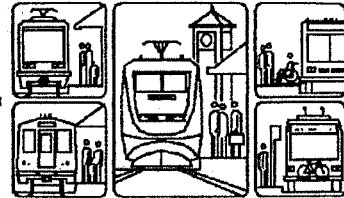
**Talking Points**

- I want to first thank JPACT and the Metro Council for their consideration of this resolution. I also want to thank Fred Hansen, Neil McFarland, and all of the excellent staff at Tri-Met for their work in bringing the Milwaukie Transit Center project to this point.
- The City of Milwaukie has been seeking a new site for the Milwaukie Transit Center since 1979, which is when the current transit center was located on-street at the corner of 21<sup>st</sup> and Jackson.
- We have looked over the years at a wide variety of sites, including ones nearer to McLoughlin Boulevard and also at ones closer to the Tillamook Branch railroad tracks – a possible candidate for commuter rail services.
- As many of you know, our downtown is very compact, and each of the sites we looked at had some fatal flaw. The Milwaukie Junior High site has significant problems as a transportation facility because the Milwaukie Junior High building is a historic property and the grounds are considered open space. Under federal regulations it would be difficult, if not impossible, to site a transit facility on this property.
- We have also looked at property near the current post office and on the site of Milwaukie Lumber. Both of these sites have problems because they are very close to Milwaukie High School, Milwaukie Elementary, and St. John's Catholic school.
- During the discussion about placement of the South-North light rail line, the Safeway property emerged as the best site for the new Milwaukie Transit Center. Even though the funding for light rail was defeated, this is still the best location for our new transit center.
- We believe this site is good not only for bus operations, but it also is a key catalyst project for implementation of our downtown plan. This transit center will help, along with a transit-oriented project and a possible grocery store, anchor the north end of downtown.
- In addition, we believe this site is compatible with all six of the alternatives being studied in the South Corridor Transportation Alternatives Study. Therefore, the project can and should proceed now rather than after the South Corridor study is complete. Even though it is not directly on a commuter rail line, Tri-Met has studied options to making commuter rail work, and we support that work.
- Thank you for your consideration of this request. It's critical to downtown Milwaukie and it supports transit throughout the region.

# Association of Oregon Rail and Transit Advocates

AORTA • P. O. Box 2772 • Portland, Oregon 97208-2772

Also known as OreARP • Oregon Association of Railway Passengers



September 12, 2000

METRO Joint Policy Advisory Committee on Transportation  
600 Northeast Grand Avenue  
Portland, Oregon 97232 2736

Re: Resolution No. 00-2980A - Amend the MTIP to include Section 5309 funds to construct a new Milwaukie Transit Center.

Dear JPACT Members

AORTA supports this resolution to fund a new transit center in Milwaukie. However, we strongly object to the inclusion of a specific site, ("one block north of the current center") in the resolution.

The primary function of a transit center is to provide a convenient, comfortable and safe environment for passengers waiting to access and transfer between multiple transit routes.

In light of the fact that a preferred alternative has not yet been selected in the ongoing South Corridor Transportation Alternatives Study which could influence the location of a new transit center, locating the site one block north (Safeway Site) is premature.

One of the options being considered in the South Corridor study (specifically requested by JPACT) is a rail transit connection to the west side utilizing the Portland and Western RR track (formally Southern Pacific Tillamook Branch Line) which runs through the heart of Downtown Milwaukie.

If this rail connection is selected as part of the South Corridor preferred alternative, it is imperative for transferring purposes that the train stop be an integral part of the transit center. Unfortunately, the Safeway site is too far from the track for this purpose, and to extend a branch track to the site is fiscally and politically impractical and would eliminate connections with future through trains to Portland.

A transit Center sited on the rail line will be more compatible with future light rail since it can follow this existing rail corridor through Milwaukie to Oregon City with minimal impact to Downtown redevelopment plans. Incorporation of a transit center into the redevelopment of the surplus Junior High School Site between Harrison and Monroe streets offers a viable alternative (see Attachment).

We respectfully request that you amend the draft resolution to:

1. Eliminate "one block north of the current center" from the eighth whereas.
2. In the tenth whereas, change to read: "The **siting of the** proposed Transit Center *[would]* **should** not preclude any transit service options presently being considered in or through Milwaukie; now, therefore".
3. Change the end of first paragraph under BE IT RESOLVED to read: "... for construction of *[the]* a Milwaukie Transit Center **at a location to be determined after the completion of the South Corridor Transportation Alternatives Study.**"

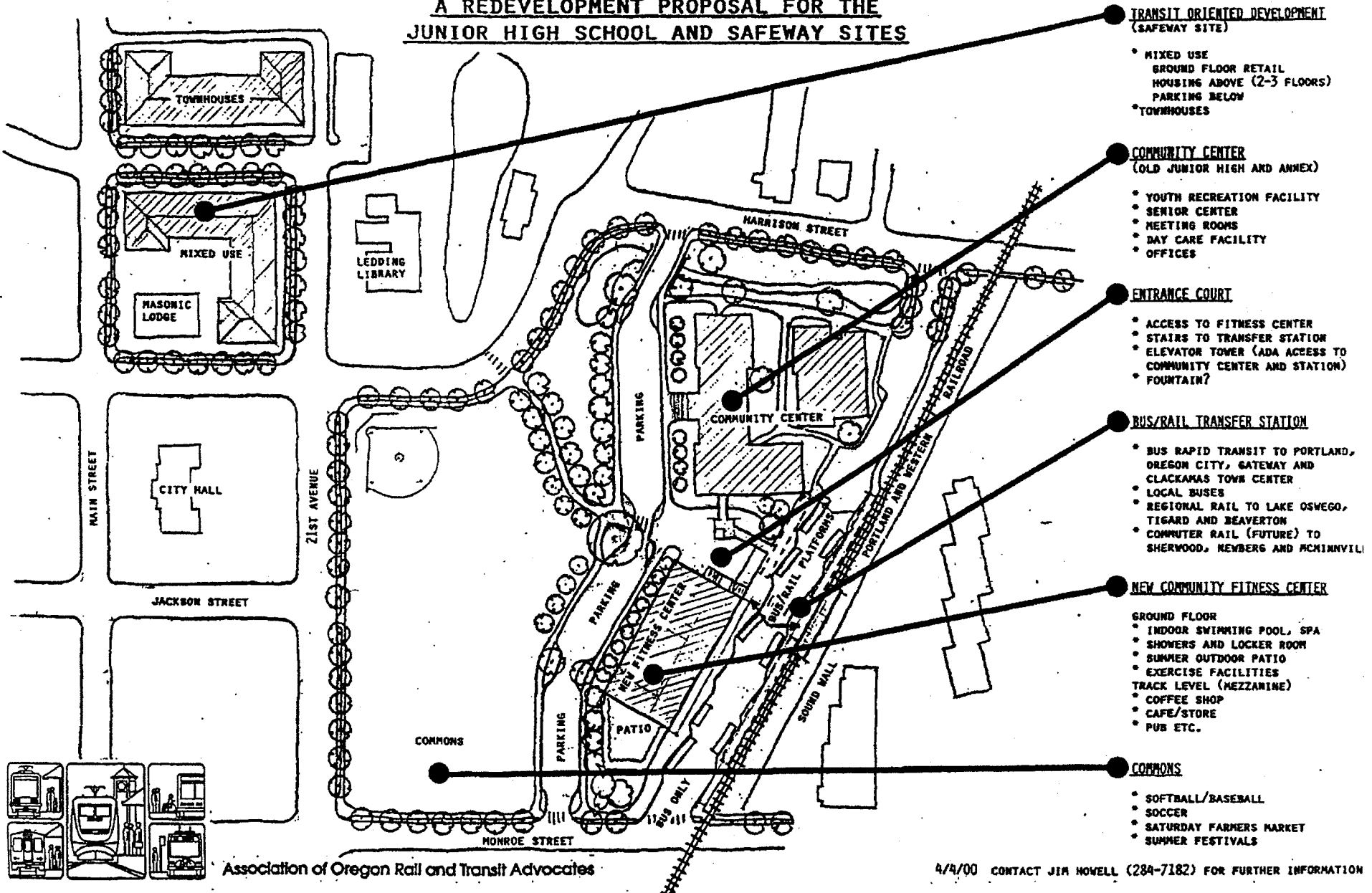
Sincerely yours,

Fred D. Nussbaum, AORTA Portland Chapter Chair

Attachment: Example alternative site.

cc: Helen M. Knoll, Regional Administrator, FTA

# A REDEVELOPMENT PROPOSAL FOR THE JUNIOR HIGH SCHOOL AND SAFEWAY SITES



Association of Oregon Rail and Transit Advocates

4/4/00 CONTACT JIM HOWELL (284-7182) FOR FURTHER INFORMATION

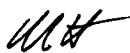


# M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1700 | FAX 503 797 1794



**METRO**

Date: September 6, 2000  
To: JPACT  
From:   
Michael Hoglund, Metro  
Subject: *Proposed Comments on Federal Planning Rules*

Attached for your review are comments that have been prepared in response to the Notice of Proposed Rulemakings (NPRM) that were published in the Federal Register in May 2000. The comments represent the draft recommended policy positions for JPACT and Metro Council consideration on the NPRM. A second set of comments will be distributed at your September 14 meeting and represent a Metro staff perspective on the more technical planning level components of the new rules. They will be provided for your information.

It was the recommendation of TPAC that JPACT focus their comments on the broader issues and implications of the rules and that specific comments on the esoteric aspects of the rules be submitted on an agency or jurisdictional basis.

For the purpose of JPACT and Metro Council review and discussion, the proposed positions are consolidated on the attachment. Once approved by JPACT and the Metro Council, the region's comments will be submitted to three separate dockets no later than the end of the comment period, September 23, 2000. The three dockets relate to proposed rule revisions for:

- *Statewide and Metropolitan Planning*
- *NEPA and Related Procedures for Transportation Decision-making*
- *ITS Architecture and Standards*

For JPACT and Council benefit, a brief introduction to each issue is provided prior to stating the regional position. More information on each issue can be provided at your September 14 meeting. Copies of the regulations will also be available. However, if you would like a copy of the three sets of regulations prior to the meeting, please call Rooney Barker at 797-1755.

## **DRAFT**

### **Portland Metropolitan Area Proposed Positions on Notice of Proposed Rulemakings September 6, 2000**

#### **ISSUE: Cooperative Revenue Forecasting**

The current and proposed planning regulations require development of "financially constrained" plans and programs. The Notice of Proposed Rulemaking (NPRM) mirrors the wording of TEA-21 in this area. The rules calls for each state to work with Metropolitan Planning Organizations (MPOs – Metro is the federally designated MPO for the Oregon portion of the Portland-Vancouver metro area) and transit operators to establish a cooperative process to estimate revenues available for each MPO. This process has traditionally worked well in Oregon on an ad hoc basis. The rules also allow the inclusion of "illustrative" projects in the federal long-range plan. Such illustrative projects would be comparable to the Metro region's list of "strategic" improvements that are included in the recently adopted RTP.

#### **Proposed Position:**

The Joint Policy Advisory Committee on Transportation for the Portland, Oregon metropolitan area (JPACT) and the Metro Council support the requirement to have states, transit operators, local governments, and MPOs cooperatively establish a set of procedures governing the projection of future revenues for use in developing financially constrained plans and programs. Given the tie of financial constraint to air quality conformity requirements under the Clean Air Act, we also recommend that state or regional air quality authorities be required to participate, as well. We believe such a requirement lays important groundwork for improving the consistency of revenue forecasts used by MPOs, thereby improving the quality of regional transportation decision-making.

However, we recommend that the language be limited. Only the procedures for forecasting revenues should be required and that the specifics be required to be included in a Statewide Memorandum of Understanding between the state, transit operator(s), air quality authorities, and the MPOs within each state. Any additional requirements may become cumbersome and conflict with the successful approach already in place in the state of Oregon.

Regarding "illustrative" projects, JPACT and the Metro Council strongly support that they be allowed in long-range transportation plans. The listing of illustrative projects allows states and regions to better work with the public to pursue new programs and funding sources that may not be reasonable to assume under financial constraint, but may be critical to addressing transportation needs that are outpacing the growth of existing revenue sources.

**ISSUE: MPO Long-Range Planning; 20-Year Planning Horizons**

The proposed rules require a minimum 20-year horizon at time of long-range plan adoption (e.g., the RTP in the Portland metropolitan area). Long-range plans must be updated every three years in air quality non-attainment or maintenance areas (e.g., Portland-Vancouver). If changes made to the STIP/MTIP between updates trigger a federal review of the long-range plan, the draft NPRMs require that the plan being reviewed still have a twenty-year horizon. The only way MPOs could avoid the possibility of having to update their long-range plan with every TIP would be to adopt a long range plans with at least a 23-year horizon in non-attainment areas. Metro's nearly complete five-year process to update the RTP will result in an adopted plan with a 20-year horizon. It may therefore become out of compliance with the proposed rule after January 1, 2001.

**Proposed Position:**

MPOs' long range plans should continue to have 20-year horizons. If TIP amendments trigger federal review, reviews should be done based on the existing long range plans, even though it may be less than 20-years to the planning horizon. However, if the requirement stays as stated in the NPRM, it should be phased-in at the time of the next three-year update.

**ISSUE: Environmental Justice**

NPRMs require processes that demonstrate explicit consideration of comments from minority, low income and elderly communities, and from persons with disabilities. Public involvement processes for long-range plans, TIPs, and federally funded projects must seek out and consider input from the transportation disadvantaged as defined above. Such procedures and resulting input must be evaluated periodically with specific attention to engaging minorities and low income persons.

Plans, the TIP, and federally funded projects must be consistent with Title VI of the Civil Rights Act, the Older Americans Act and the Americans with Disability Act; and must avoid or mitigate disproportionately high and adverse impacts on low income and minority populations. An analysis of impacts is required at each stage of the process (planning, programming of funds, and project development). The NPRM does allow for some level of adverse impact at the project level

However, the NPRMs do not give guidance as to how these requirements may be met, nor do they set performance criteria. This may be problematic given the potential created by the NPRMs for MPOs (actions and decisions to be subject to legal challenge under Title VI). An additional concern is that the lack of specific guidance is likely to result in different offices of US DOT making different decisions on environmental justice requirements anyway.

TPAC discussed the environmental justice provision within the NPRM at length. The key issue was whether rule language would be helpful to planning agencies, with the possibility of requiring substantial compliance; or whether no guidance would be better, with the understanding that planning agencies must address Title VI and other requirements.

**Proposed Position:**

JPACT and the Metro Council supports the intent of NPRM changes, and also the specific requirements with respect to data collection and analysis, and public outreach.

To create certainty and clarity, and to avoid the high potential for litigation created by the NPRM proposals, the following additions and changes should be made:

- MPOs and states should be given explicit guidance on how to meet environmental justice objectives and/or related performance measures and standards. A series of best management practices should be provided.
- The need for the new definitions found in the NPRMs should be reviewed, and where possible these definitions should be replaced by definitions that have already been tested in the courts. In particular, the definition or interpretation of "adverse benefit" should be defined or be allowed to be defined through the MPO planning process.

**ISSUE: MIS Replacement/NEPA**

The NPRM attempt to link systems-level planning analysis (such as the done for the RTP) with project-level environmental analysis. The intent is to streamline processes and eliminate duplicative steps and data collection. In addition, as required by TEA-21, the stand alone Major Investment Study (MIS) is eliminated and planning and environmental processes are linked. A key area where they are linked is through the requirement to include a "purpose and need" statement for each project identified in the planning phase. The purpose and need statement can then carry over to NEPA and should have the effect of narrowing alternatives.

The NPRMs also appear to allow a great amount of local discretion in deciding how much data and analysis is required at the planning stage, but provide neither clear guidance on what amount of data and analysis is required in order to satisfy NEPA demands. Neither does the NPRM provide any assurance that planning studies will be given sufficient weight in the NEPA process. The NPRMs potentially allow a federal agency to overrule a decision made through the MPO process at the planning stage.

The NPRMs also lack specific guidance in many areas – notably in how secondary and cumulative impacts should be treated early in the planning process

**Proposed Position:**

The NPRMs, as written, do not provide much potential for streamlining, avoidance of duplication and speeding up of projects. They may result in significant additional duplication and other work on MPOs. In order to minimize unnecessary work and to achieve streamlining goals, language should be added to:

- Allow the long-range plan and TIP to group or bundle smaller projects under a single purpose and need statement (for example, general bicycle improvements, transit service expansions, pavement over-lays, etc.). This should result in consistency with NEPA while eliminating extensive work for MPOs; and
- Provide specifics on expectations for analysis of secondary and cumulative impacts in the planning process.

**ISSUE: Intelligent Transportation Systems (ITS)**

To implement section 5206 (e) of TEA-21, the NPRMs call for:

- Development of a regional ITS integration strategy within 2 years, including identification of major ITS projects.
- Regional interagency agreements on interoperability, ITS standards and routine operations.
- Design of a regional ITS architecture that is compatible and interoperable with the national ITS architecture, within 2 years. This could be a state or MPO responsibility.
- All highway and transit projects to be consistent with regional ITS architecture

MPOs, including Metro, lack resources and expertise to do quality work in ITS, particularly within a two year time frame.

**Proposed Position:**

JPACT and the Metro Council support a coordinating role for MPOs in development of regional ITS strategies and regional inter-agency ITS agreements. MPOs should only be required to include sufficient ITS policies in the long-range plans. MPOs should coordinate and report on, but not lead, ITS implementation efforts. DOTs, local governments, and transit operators are the appropriate implementation agencies.

## Metro staff comments on Notice of Proposed Rulemaking for:

- *Statewide and Metropolitan Planning*
- *NEPA and Related Procedures for Transportation Decision-making*
- *ITS Architecture and Standards*

**ISSUE:** Cooperative Revenue Forecasting

### Referenced Sections:

§1410.322(b)(10)	Transportation Plan Content – Financial Plan
§1410.324(e)	Transportation Improvement Program Content – Financial Plan
§1410.330(c)	Illustrative Projects in Transportation Improvement Programs

### Proposed Position:

Metro staff supports the position on this issue as stated in the comments of the region's Joint Policy Advisory Committee on Transportation for the Portland, Oregon metropolitan area (JPACT) and the Metro Council. That position supports the requirement to have states, transit operators, local governments, and MPOs cooperatively establish a set of procedures governing the projection of future revenues for use in developing financially constrained plans and programs. Given the tie of financial constraint to air quality conformity requirements under the Clean Air Act, we also recommend that state or regional air quality authorities be required to participate, as well. Metro staff believes such a requirement lays important groundwork for improving the consistency of revenue forecasts used by MPOs, thereby improving the quality of regional transportation decision-making.

However, Metro staff recommends that the language be limited. Only the procedures for forecasting revenues should be required and that the specifics be required to be included in a Statewide Memorandum of Understanding between the state, transit operator(s), air quality authorities, and the MPOs within each state. Any additional requirements may become cumbersome and conflict with the successful approach already in place in the state of Oregon.

Regarding "illustrative" projects, Metro staff supports the JPACT and the Metro Council position that such projects be allowed in long-range transportation plans. Metro staff agrees that the listing of illustrative projects allows states and regions to better work with the public to pursue new programs and funding sources that may not be reasonable to assume under financial constraint. Such programs and funding assumptions may be critical to addressing transportation needs that are outpacing the growth of existing revenue sources.

**ISSUE: Annual TIP Obligation Listing of Projects**

Referenced Sections: 1410.324(n)(5)

**Proposed Position:**

Production of annual obligation listings is an important part of feedback to the public of the results of the transportation planning process. Metro staff supports this requirement.

However, to ensure timely release of the annual listing, additional language should be added to the NPRM to require project implementing agencies (state DOTs and transit agencies) to:

- develop project monitoring systems to track project obligations and status
- provide information to MPOs so that region-wide listings can be made available to the public

For the Portland region, existing MOUs would be modified to ensure such information sharing procedures exist.

**ISSUE: MPO Long Range Planning; 20-Year Planning Horizons**

Referenced Section: 1410.322(e), 1410.214 (a)(4)

**Proposed Position:**

Metro's staff position supports the JPACT/Metro Council comment that the MPOs' long range plans should continue to have 20-year horizons upon adoption. If TIP amendments trigger federal review, such reviews should be done based on the existing long range plans, even though there may be less than 20-years remaining to the planning horizon. However, if the requirement stays as stated in the final NPRM, it should be phased in at the time of the next three-year update.

**ISSUE: Environmental Justice**

Referenced Section: 1410.206(a), 1410.316(c)

**Proposed Position:**

Metro staff concurs with the JPACT and the Metro Council position to support the intent of the proposed rules, and also the specific requirements with respect to data collection and analysis, and public outreach.

To create certainty and clarity, and to avoid the high potential for litigation created by the NPRM proposals, the following additions and changes to the NPRMs should be made:

- MPOs and states should be given explicit guidance on how to meet environmental justice objectives and/or related performance measures and standards.

- The need for the new definitions found in the NPRMs should be reviewed, and where possible these definitions should be replaced by definitions that have already been tested in the courts. In particular, the definition or interpretation of "adverse benefit" should be defined or be allowed to be defined through the MPO planning process.

**ISSUE: Air Quality Conformity/TIP Extensions**

Referenced Section: 1410.324 (b), 1410.324 (p)

**Proposed Position:**

Metro staff support the proposed NPRM, particularly with the provision for developing an interim TIP.

**ISSUE: MIS Replacement/NEPA**

Referenced Sections: 1410.218, 1410.318, 1420.201, 1410.203, 1420.107

**Proposed Position:**

The NPRMs, as written, do not provide much potential for streamlining, avoidance of duplication and speeding up of projects. They impose significant additional duplication and other work on MPOs. In order to minimize unnecessary work and to achieve streamlining goals, language should be added to:

- Allow the long-range plan and the TIP to group or bundle smaller projects under a single purpose and need statement (for example, general bicycle improvements, transit service expansions, pavement overlays, etc.)
- Provide specifics on expectations for secondary and cumulative impacts in the planning process;
- Add MPOs as agencies that enter agreements through the NEPA implementation stage of projects (1420.303) to the extent MPO-related planning analysis is relied upon for developing NEPA alternatives
- Require, or provide greater incentives for, federal resource and permitting agencies to participate in the planning phase of projects, including the long-range plan.
- Reconsider the need for the seven NEPA procedural goal statements as described in section 1420.107. A concern is whether they will actually result in a streamlined process or require additional findings and information in order to satisfy.

**ISSUE: Intelligent Transportation Systems (ITS)**

Referenced Section: 1410.214(a)(3), 1410.310(g), 1410.322(b)(11), 940

**Proposed Position:**

Metro staff concurs with the JPACT and the Metro Council position to support a coordinating role for MPOs in development of regional ITS strategies and regional inter-



agency ITS agreements. MPOs should only be required to include sufficient ITS policies in the long-range plans. MPOs should coordinate and report on, but not lead, ITS implementation efforts. DOTs, local governments, and transit operators are the appropriate implementation agencies.

**ISSUE: Transitional Guidance**

Referenced Sections: Not Applicable

**Proposed Position:**

Metro staff support the position of the American Association of Metropolitan Planning Organizations (AAMPO) that it is reasonable to expect a transition period to allow the regulated entities time to adjust their processes and procedures to comply with the new rules. However, transition times will vary by requirement. There should be "built-in" transition time, depending on when the final rule is published and how it falls in a given Plan or TIP/STIP update cycle. Plan content and process requirements should not need to be addressed until the next Plan update; that same is true with the MTIP/STIP.

The ITS rule does have a transition period - a regional architecture is not required until two years after the rule is final, as does the statewide ITS integration strategy requirement (1410.214.a.3) which requires the strategy "no later than the first update of the STIP or transportation plan that occurs two years following the effective date of the rule." We support those transition periods.

Regarding post-rulemaking guidance, Metro staff recommends guidance and interpretation, where possible. A good area for case studies, best management practices, and demonstration projects is related to the seven NEPA process goals identified in 1420.107.

**ISSUE: Consistent Public Involvement**

**Proposed Position:**

The Metro staff continues to support public outreach requirements as contained in the NPRM. However, we have concern with the lack of definition for certain groups. For example, at §1410.316(c)(1), the NPRM spells out the process for meeting Title VI and Executive Order 12898 (environmental justice) requirements and concerns. Again, it would be appropriate for the rule to provide guidance on the definition of "low-income" and the geographic level of detail required for subsequent analysis. It is difficult to meet the requirement of determining "disproportionately high and adverse environmental impacts" without such guidance. This is needed not only by MPOs, but also to guide the FTA and FHWA staff performing certification reviews of TMAs on the adequacy of the MPO's process.



# Federal Register

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**Thursday,  
May 25, 2000**

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## **Part III**

## **Department of Transportation**

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**Federal Highway Administration  
Federal Transit Administration**

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**23 CFR Parts 450 and 1410**

**49 CFR Parts 613 and 621**

**Statewide Transportation Planning;  
Metropolitan Transportation Planning;  
Proposed Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Parts 450 and 1410****Federal Transit Administration****23 CFR Part 1410****49 CFR Parts 613 and 621**

[FHWA Docket No. FHWA-99-5933]

FHWA RIN 2125-AE62; FTA RIN 2132-AA66

**Statewide Transportation Planning;  
Metropolitan Transportation Planning****AGENCIES:** Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA and the FTA are jointly issuing this document which proposes revisions to the regulations governing the development of transportation plans and programs for urbanized (metropolitan) areas and statewide transportation plans and programs. These revisions are a product of statutory changes made by the Transportation Equity Act for the 21st Century (TEA-21) enacted on June 9, 1998, and generally would revise existing regulatory language to make it consistent with current statutory requirements. In addition, the proposed regulatory language addresses the implementation of Presidential Executive Order 12898 regarding Environmental Justice. These changes are being proposed in concert with revisions to regulations regarding environmental impact and related procedures which are published separately in today's Federal Register. The two rules are linked in terms of their working relationship and the FHWA and the FTA are soliciting comments on each rule individually, as well as their intended functional and operational interrelationships.

**DATES:** Comments must be received on or before August 23, 2000. For dates of public information meetings see "Supplementary Information."

**ADDRESSES:** All signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard. For addresses of public information meetings see "Supplementary Information."

**FOR FURTHER INFORMATION CONTACT:** For the FHWA: Mr. Sheldon M. Edner, Metropolitan Planning and Policies Team (HEPM), (202) 366-4066 (metropolitan planning), Mr. Dee Spann, Statewide Planning Team (HEPS), (202) 366-4086 (statewide planning), or Mr. Reid Alsop, Office of the Chief Counsel (HCC-31), (202) 366-1371. For the FTA: Mr. Charles Goodman, Metropolitan Planning Division (TPL-12) (metropolitan planning), (202) 366-1944, Mr. Paul Verchinski, Statewide Planning Division (TPL-11) (statewide planning), (202) 366-6385, or Mr. Scott Biehl, Office of the Chief Counsel (TCC-30), (202) 366-0952. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

**Public Information Meetings**

We will hold a series of seven public briefings within the comment period for the NPRM. The purpose of these briefings is to explain the content of the NPRM and encourage public input to the final rulemaking. The meetings will address this NPRM, the companion NPRM on the environmental (National Environmental Policy Act of 1969 (NEPA)) process, and the NPRM on Intelligent Transportation Systems Architecture consistency. The meetings will be scheduled from approximately 8 a.m. to 5 p.m. at the locations listed below. Further information and any

changes in addresses, dates and other logistical information will be made available after the publication of this NPRM through the FHWA and the FTA websites, and through other public announcement avenues and the newsletters and websites of major stakeholder groups. Individuals wishing information, but without access to these sources, may contact the individuals listed in the above caption **FOR FURTHER INFORMATION CONTACT**.

The structure of the meetings will emphasize brief presentations by the DOT staff regarding the content of the NPRM. A period for clarifying questions will be provided. Under current statutory and regulatory provisions, the DOT staff will not be permitted to engage in a substantive dialog regarding what the content of the NPRMs and the final regulations should be. Attendees wishing to express ideas and thoughts regarding the final content of the rules should direct those comments to the docket. Briefing sites will include: Boston, MA, Auditorium, Volpe National Transportation Systems Center, 55 Broadway, June 9, 2000; Atlanta, GA, Westin Peachtree Plaza Hotel, 210 Peachtree Street, June 20, 2000; Washington, D.C., Marriott Metro Center, 775 12th Street, NW, June 23, 2000; Chicago, IL, Holiday Inn Mart Plaza, 350 North Orleans Street, June 27, 2000; Denver, CO, Marriott City Center, 1701 California Street, June 30, 2000; Dallas, TX, Hyatt Regency Hotel Dallas, 300 Reunion Boulevard, July 11, 2000; and, San Francisco, CA, Radisson Miyako, 1625 Post Street, July 19, 2000.

As part of the outreach process planned for these proposed rules, the FHWA/FTA will be conducting a national teleconference on June 15, 2000 from 1-4 p.m. eastern time, through the auspices of the Center for Transportation and the Environment at North Carolina State University. The teleconference will be accessible through numerous downlink locations nationwide and further information can be obtained from Ms. Katie McDermott at [kpm@unity.ncsu.edu](mailto:kpm@unity.ncsu.edu). The purpose of the teleconference is to describe the proposed new statewide and metropolitan planning, National Environmental Policy Act of 1969 (NEPA), Public Law 91-190, 83 Stat. 852, implementation, and Intelligent Transportation Systems (ITS) rules.

An overview of each of the three notices of proposed rulemaking (NPRMs) will be presented and the audience (remote and local) will have opportunities to ask questions and seek clarification of FHWA/FTA proposals. By sponsoring this teleconference it is hoped that interest in the NPRMs is

generated, that stakeholders will be well informed about FHWA/FTA proposals, and that interested parties will participate in the rulemaking process by submitting written suggestions, comments and concerns to the docket.

### Background

Sections 1203, 1204, and 1308 of the TEA-21, Public Law 105-178, 112 Stat. 107, amended 23 U.S.C. 134 and 135, which require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. Similar changes were made by sections 3004, 3005, and 3006 of the TEA-21 to 49 U.S.C. 5303-5306 which address the metropolitan planning process in the context of the FTA's responsibilities. We are proposing revisions to our current metropolitan and statewide planning regulations and are inviting comments on the proposed revisions.

### General Information Concerning Development of Regulation

#### *Approach to Structure of Proposed Regulation*

Revisions to the current regulation at 23 CFR part 450 are being proposed to reflect the impacts of the TEA-21. We have adopted an approach to the proposed revisions that will rely heavily on guidance and good practice. The proposed regulatory language attempts to respond to legislative mandates and changes with minimal amplification where feasible. In some cases, other factors, e.g., court cases, presidential directives, etc., have provided a stimulus for change and amplification. In these instances, the agencies have tried to keep regulatory language to a minimum except where clarification would assist appropriate agencies and groups in complying.

In a separate document in today's *Federal Register*, we propose to remove 23 CFR part 771 and add parts 1420 and 1430 in its stead. This regulation implements the FTA and the FHWA processes for complying with the Council on Environmental Quality's (CEQ) regulations for implementing the NEPA, Public Law 91-190, 83 Stat. 852. Jointly administered by the FTA and the FHWA, part 771 was last revised in 1987. The passage of the TEA-21 and its predecessor, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, have contributed legislative impetus to a revision. To facilitate compliance with section 1308 of the TEA-21 dealing with major investment studies and section 1309 addressing environmental streamlining and twelve

years of court rulings and experience, we propose to revise the regulations regarding environmental impact and related procedures in conjunction with those for metropolitan and statewide transportation planning. In general, the intent is to more effectively link the two regulations to facilitate integration of decisions, reduce paperwork and analytical activity where feasible, and to refine procedures and processes to achieve greater efficiency of decision making. In addition, we believe that an integrated approach to planning and project development (NEPA process plus additional project level actions needed to prepare for project implementation) will contribute to more effective and environmentally sound decisions regarding investment choices and trade-offs.

In preparing this proposed rule, we have attempted to maintain or reduce the level of data collection and analyses that is currently required. We solicit comment on the extent to which this strategy has been achieved. Comments suggesting that the strategy has not been successful should identify specific requirements and/or provisions that increase burdens and provide specific reasons for this increase. The degree or extent of the increase should be identified also. Suggestions to lessen burdens are welcome.

In the proposed rule, we revised the section headings to utilize more commonplace language and for clarity. The substance of the sections is modified in some cases as described below. The organization of each section and overall flow of organization remains predominantly unchanged, except as indicated in the section-by-section discussion.

In addition, we are proposing a new numbering scheme. Current part 450 would be redesignated as part 1410.

#### *Input to Development of Proposed Regulation*

As noted above, the TEA-21 was signed into law on June 9, 1998. Subsequently, the DOT initiated a series of national meetings to solicit input regarding possible approaches to implementing the new legislation. The results of the principal public sessions in this outreach effort are summarized in "Listening to America: TEA-21 Outreach Summary, 1998." This document was published by the Office of the Secretary, U.S. Department of Transportation. It is currently available online through the following website: [www.fhwa.dot.gov/tea21/listamer.htm](http://www.fhwa.dot.gov/tea21/listamer.htm). Additionally, on February 10, 1999, we issued a discussion paper (Federal Highway Administration and Federal

Transit Administration, TEA-21 Planning and Environmental Provisions: Options for Discussion) to further solicit public comments regarding previously provided suggestions. This discussion paper was designed to reflect comments from stakeholder groups and encourage all interested parties to provide additional detailed comments on approaches to implementing the statutory provisions for the planning and environmental sections of the law. The Options Paper is available online at [www.fhwa.dot.gov/environment/tea21imp.htm](http://www.fhwa.dot.gov/environment/tea21imp.htm).

#### *Overall Strategy for Regulatory Development*

Our strategy for regulatory development has three principal elements: (1) Outreach and listening to stakeholders, (2) developing improvements that will allow the FHWA, the FTA, the States and metropolitan areas to demonstrate measurable progress toward achieving congressional objectives, and (3) looking internally, with our Federal partner agencies, at how we collectively can improve coordination and performance.

As indicated above, the FHWA and the FTA, in concert with the Office of the Secretary and other modal administrations within the DOT, developed and implemented an extensive public outreach process on all elements of the TEA-21. The process began shortly after the legislation was enacted on June 9, 1998, and various types of outreach activities have been underway since that time. The initial six-month departmentwide outreach process included twelve regional forums and over 50 focus groups and workshops (63 FR 40330, July 28, 1998). The DOT heard from over 3,000 people, including members of Congress, Governors and Mayors, other elected officials, transportation practitioners at all levels, community activists and environmentalists, freight shippers and suppliers, and other interested individuals. The input received was valuable and has helped us shape our implementation strategy, guidance and regulations. Those comments will be placed in this docket as informational background.

With respect to the planning and environmental provisions of the TEA-21, we learned a great deal through the twelve regional forums and focus group sessions and subsequently implemented a second, more focused phase of outreach which included issuing an Options Paper for discussion on the Planning and Environmental Streamlining Provisions of the TEA-21. The contents of the Options Paper

reflected input received up to that time and built upon the existing statewide and metropolitan planning regulations and our implementing regulation for the NEPA. We released the Options Paper on February 10, 1999, and received comments through April 30, 1999.

More than 150 different sets of comments were received from State Departments of Transportation (State DOTs), Metropolitan Planning Organizations (MPOs), counties, regional planning commissions, other Federal agencies, transit agencies, bicycle advocacy groups, engineering organizations, consultants, historical commissions, environmental groups, and customers—the American public. These comments were all reviewed and taken into consideration in the development of this notice of proposed rulemaking.

Another element of outreach included meetings between the FHWA and the FTA and key stakeholder groups, other Federal agencies, and the regional and field staff within the FHWA and the FTA. These sessions also helped guide us in developing this notice of proposed rulemaking. Comments on this NPRM are welcomed and will be taken into account prior to the issuance of a final regulation on statewide and metropolitan planning under the TEA-21.

The Options Paper comments are contained in the docket and are summarized below. This general summary is structured around the issues as presented in the Options Paper and seeks to provide an overall perspective on the range of opinions submitted to the FHWA and the FTA. Details on specific comments and input can be obtained by reviewing the materials in the docket.

These proposed rules were developed by an interagency task force of planners and environmental specialists of the FHWA and the FTA, with input from other DOT modal agencies, the U.S. Environmental Protection Agency (EPA), other Federal agencies and the Office of the Secretary, U.S. DOT. The task force reviewed all input received from the outreach process and through other sources which communicate regularly with the DOT. In addition, comments were solicited from the field staff of the FHWA and the FTA.

#### **Summary of Comments Received on Options Paper**

The following discussion summarizes the comments received on the Options Paper and the response we are generally taking in structuring this proposed rule. This summary focuses only on the comments directly related to planning.

The comments regarding environmental provisions, generally, are treated in the preamble to the proposed revision to 23 CFR 771. Cross-cutting issues as discussed in the Options Paper appear in both preambles, as appropriate. Since many commenters included both planning and environmental topics in their correspondence, an exact count of planning versus environment issues in the 150 comments received is not easy or useful. The summary is not intended to be complete or comprehensive. Rather, it is provided to give the public a general sense of the issues addressed in the comments received. The views of individual commenters can be obtained by consulting the docket as indicated above.

#### **Planning Factors**

We were offered a number of options on how to ensure that the seven new planning factors added by the TEA-21 are addressed in the metropolitan and statewide planning processes. One option is to include the TEA-21 statutory language in the planning regulation and provide maximum flexibility to States and MPOs to tailor approaches to local conditions. In addition, it was suggested that we amplify the basic statutory language in this regulation by providing information to States and MPOs, including best practices on approaches to considering the factors, and technical assistance on planning practices which integrate consideration of the seven factors. A third possibility was to develop specific criteria for the consideration of each of the seven factors, include the criteria in this regulation, and require that State DOTs and MPOs demonstrate compliance through the planning certification process.

The vast majority of comments received on the planning factors, including those from the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the Association of Metropolitan Planning Organizations (AMPO), and the American Association of State Highway and Transportation Officials (AASHTO), supported a twofold approach: (1) To include the TEA-21 statutory language in the planning regulation without further regulatory requirements, and (2) to provide technical assistance and information on current practices to States and MPOs to aid them in consideration of the planning factors. An additional point raised, by State DOTs and MPOs in particular, was that guidance, if issued by the FHWA and the FTA, should not be construed as

constituting new, binding requirements on State DOTs and MPOs.

#### ***Systems Operation and Management and Integration of Intelligent Transportation Systems Into the Planning Process***

The TEA-21 directs that operation and management of the transportation system requires greater attention during planning. Capital investment, especially for new capacity but also for system preservation, has dominated traditional transportation planning analyses and decisions. Continuing fiscal constraint, growing sensitivity to environmental impacts of infrastructure and the need for prudent management of infrastructure all lead to a heightened consideration of systems management and operational strategies as part of systems planning. The emergence of various Intelligent Transportation System (ITS) technologies as useful tools in the operation and management of the transportation system has also highlighted the need to focus increased attention in this area. An additional factor in treating ITS as part of system operation and management are the requirements of section 5206(e) of the TEA-21 regarding the consistency of federally funded ITS projects (funded with highway trust fund dollars) with the National ITS Architecture.

Many individual State DOTs, MPOs, and their national associations (AMPO and AASHTO) expressed the view that the planning factor requiring consideration of strategies to promote efficient system management and operation is sufficient to direct States and MPOs to consider operations and management issues as an integral part of their planning efforts. They indicated that the seven factors are all important and that to highlight consideration of any one factor above all others is inappropriate. Further, they felt that treating operations and management issues with any additional emphasis would be duplicative and is not necessary.

Only one commenter, the Maricopa Association of Governments, explicitly addressed the ITS matter. This agency suggested that we implement a requirement for federally funded ITS projects to be in accord with a regional ITS plan that is developed through a cooperative process.

#### ***Cooperative Development of Revenue Forecasts***

The TEA-21 retained the basic requirement for financially constrained metropolitan plans and statewide and metropolitan transportation improvement programs (STIPs/TIPs).

The TEA-21 clarifies the requirement for cooperative development by States, MPOs, and transit agencies of estimated future levels of funding from local, State, or Federal sources that may reasonably be expected to be available to metropolitan areas.

In general, many State DOTs and the AASHTO seek the greatest flexibility while MPOs and local governments seek provisions which would ensure that they get a "fair share" of Federal funding. The NACE, the AMPO, the National Association of Counties (NACO), and the Surface Transportation Policy Project (STPP) observe that a formal process should be required based upon consensus of the State, MPO, and transit agencies (where applicable) and that the process should be documented and implemented with an adequate phase-in period provided. The national associations and many of their constituent members commented that the process which has evolved over the past several years is inadequate for MPO and local agency needs, and that the Congress intended that this be rectified through the TEA-21 clarifying language. Both the NACE and the AMPO support the development of formal procedures, including decision rules for allocating funds and the development of internal and external dispute resolution and appeals processes to ensure that revenue forecasting is a truly collaborative process. The NACE also suggests that the FHWA and the FTA serve as "honest brokers" between State transportation agencies and MPOs when there is disagreement on revenue forecasts and allocation.

#### *Illustrative Projects*

Organizations and agencies, including the Indian Nation Council of Governments, the Public Policy Institute of California, the AMPO, and the EPA raised concerns about the need for coordination between States and MPOs in cases where illustrative projects are proposed to be added to metropolitan area plans or TIPs. Specifically, it was suggested that in metropolitan areas, MPOs should have explicit approval authority for the inclusion of such projects in transportation plans and TIPs and for the implementation of illustrative projects.

On the whole, respondents supported a position that illustrative projects are important to them, but that such projects should not be included in the transportation plan or TIP conformity analysis until formally amended into the Plan/TIP. In addition, there was considerable support for an approach which requires MPO concurrence on projects that are proposed to be

advanced to an MPO plan and/or TIP. The Texas Natural Resources Conservation Commission and the Colorado DOT expressed concern that illustrative projects would be allowed to circumvent the planning process. State DOTs, in particular, advocated allowing illustrative projects to be included in the conformity analyses for plans and TIPs in order that it may be demonstrated that they will not jeopardize the conformity of plans and TIPs.

The AASHTO and several State DOTs felt that we are being too restrictive in our definition of a financially constrained plan. In short, these commenters request more flexibility. Some State DOTs, including the Texas, New Jersey, Missouri, and Virginia DOTs point out that they feel it entirely appropriate to conduct NEPA related project development activities and studies on such projects, outside of the fiscal constraint requirements. They endorse amending such projects into the plan and TIP when appropriate, and at that time trigger fiscal constraint and conformity requirements.

#### *Annual Listing of Projects*

During the outreach process, the Missouri DOT, and the Denver Regional Council of Governments (DRCOG) remarked that MPOs do not have the authority to obligate Federal funds and that States and transit agencies are the authorized recipients of Federal funds. Therefore, they suggest, the States, transit agencies, and/or the Federal government need to provide the necessary information to the MPOs in order that they may comply with the TEA-21 requirement for an annual listing of projects.

The AMPO recommended that we establish and maintain a project monitoring system for the purpose of tracking Federal highway and transit obligations and that we make this system accessible to the MPOs in order that it might provide the basis for the annual listing of projects. These stakeholders are concerned that there be clear direction to the implementing agencies (States and transit agencies) for meeting this TEA-21 requirement. Further, they are concerned that MPOs, without the assistance of implementing agencies, do not have the necessary information to comply with this requirement. The American Road and Transportation Builders Association (ARTBA) felt the annual list should include all obligated funds, rather than just projects with Federal funding.

The U.S. EPA believes a nationally uniform format for these lists should be developed and that such lists should be

sent to State and Federal environmental agencies, the interagency consultation groups under the transportation conformity regulation, and others.

The Transportation Equity Network and the Center for Community Change advocate the preparation of this list on a zip-code basis and cited a U.S. Department of Housing and Urban Development (HUD) model. They suggest a zip-code based list is easily understandable by members of the public.

Many of those who commented supported an approach which would provide easy public access to information, through a wide means of communication, as noted above. Many stakeholders, including the AMPO and the Kentucky Transportation Cabinet, opposed a process which would require the development of such a list through the public involvement process of the MPO. However, the American Planning Association, the Surface Transportation Policy Project, the Urban Habitat Program, the Tri-State Transportation Campaign, and the National Association to Defend NEPA, among others, supported the dissemination of the list, once developed, through easily accessed public distribution channels.

#### *Coordination With Local Elected Officials in Non-Metropolitan Areas*

The NACO, the National Association of Development Organizations, the STPP, the York County Planning Commission (Pennsylvania), the Minnesota DOT, and the Georgia DOT all suggested that where regional planning organizations or councils of government exist, they be considered as an entity that States could work with to facilitate the engagement of elected officials. The NACE, U.S. House of Representative Bob Ney and others supported a two-phased approach: the FHWA and the FTA would provide the flexibility to States and local elected officials to develop a process, and then be provided ample time to document and formalize the process pursuant to the TEA-21. These commenters felt that the flexibility to tailor approaches is needed, but that documentation of the agreed upon approach is also needed to ensure it is implemented on a continuing basis.

The National Association of Towns and Townships suggested more formal processes, like those that are in place in some States, where local governments form development districts or regional development commissions, modeled to some extent after the MPO process. The Land-of-the-Sky Regional Council indicated that this approach is necessary to ensure rural officials have

a voice in decision making and that rural area needs are addressed. In addition, they suggest that such an approach ensures the coordination of a broad array of objectives relating to economic development, land use, and transportation. State DOTs in Idaho, Montana, North Dakota, South Dakota, Wyoming, New York, Virginia and Oklahoma suggested that existing local official consultation arrangements are adequate and that compliance with the TEA-21 provision merely requires documentation of existing arrangements.

#### *20-Year Forecast Period in Transportation Plans*

Commenters, including AASHTO, ITE, Virginia DOT, Texas DOT, Washington DOT, and Kansas DOT supported a clarification which reiterates that transportation plans must be for a 20-year minimum forecast period at the time of plan adoption. Further, the Capital District Transportation Authority, the Regional Transit Agency in Denver, the Central Puget Sound Regional Transit Agency, the Texas Natural Resources Conservation Commission, the Lackawanna County Regional Planning Commission and others felt that so long as metropolitan TIP updates and amendments (required every two years) are consistent with the metropolitan plan, then, a metropolitan plan update with a new 20-year forecast period should not be required. The STIP amendments and updates (also required every two years) would be governed by the State plan and its unique update schedule.

#### *Transportation Conformity Related Issues*

There are several issues related to the EPA conformity regulation in 40 CFR parts 51 and 93 that could be addressed in the revised planning regulations. These issues relate to clarifying requirements and definitions, and could lead to better integration of transportation and air quality planning, a principal objective of the EPA's regulation. These include:

1. Consistency between metropolitan plan update cycle and the point at which a conformity determination is required.

During the outreach process, and in many of the comments to the Options Paper, stakeholders indicated that they interpret the three-year clock for a plan (and required conformity analysis) as starting from the date the MPO approves the metropolitan plan. Agencies, including the Utah DOT, the New York DOT, and others commented that this

provides certainty about the exact time frame in which the plan needs to be updated and that this is the preferred approach to clarifying this issue.

In nonattainment and maintenance areas, however, this approach is complicated by required MPO and Federal conformity findings. The AASHTO, and the Virginia DOT supported making the effective date of the plan the date of the Federal conformity finding. The AMPO indicated that it has no certainty as to when the FHWA and the FTA will approve a conformity determination on a metropolitan plan and thus, tying the effective date of the plan to an approval over which they feel they have no control does not, in its view, facilitate the planning process.

2. Transportation Control Measures (TCMs) in State Implementation Plans (SIPs).

Stakeholders, including the Bicycle Federation of America, the AASHTO, and the AMPO, observed that TCMs, for which Federal funding or approvals are required, must meet the TEA-21 planning requirements (i.e., come from a conforming and financially constrained transportation plan and TIP) and that attempting to circumvent this process, in order to place these measures in SIPs, undermines the transportation planning process.

3. Definitions: TIP Amendments, Conformity Lapse, TIP Extensions.

The FHWA and the FTA have considered clarifying ambiguous terms used in the ISTEA and the EPA's conformity regulation 40 CFR parts 51 and 93. The New Jersey DOT, the AMPO, the Utah DOT, the Texas Natural Resources Conservation Commission, the Wisconsin DOT, and the DRCOG have endorsed the concept of clarification of definitions and terms and want an opportunity to comment on proposed definitions.

#### **Cross Cutting Issues**

There are a number of options for implementing the cross-cutting planning and environmental provisions of the TEA-21. Both regulatory and non-regulatory approaches were suggested to us. The concepts discussed in the proposed rule have been coordinated with other administrations within the DOT and with other Federal agencies.

#### *A. Public Involvement*

Some State and local agencies have expressed interest in ways to integrate the public involvement process related to plan and TIP development with public involvement process related to the project development. Several stakeholder groups have noted the

difficulties in getting public input on long-range plans and TIPs and the tendency for the public to be more inclined to participate in project-specific opportunities for input. They indicated that this tends to frustrate the public involvement efforts of State and MPO planners to obtain input on long-range transportation plans. During the public outreach process, we sought input in this area, as well as examples of successful techniques and approaches to engage the public on both project-level proposals and long-range plans and TIPs.

Comments from stakeholders were varied. However, there were a substantial number of comments that preferred the following two-fold approach: retaining the public involvement approach included in the planning regulation and modifying the NEPA regulation public involvement requirements to make our procedures the same (based on the FHWA, rather than the FTA, approach). This, they suggest, would allow States and MPOs to design processes that work best given local conditions and needs, yet would simplify the NEPA public involvement process by consolidating the FHWA and the FTA processes into one.

In arguments supporting this option, a considerable number of commenters, including State DOTs in Montana, Washington, New Jersey, Idaho, Wyoming, North Dakota, South Dakota, and the AASHTO, pointed out distinctions between the type of public involvement that must occur in the planning process and that which is sought in the NEPA process. They point out that these two processes, tailored according to each need, can serve two different purposes and can work without conflict.

There were a number of comments on whether freight interests and representatives of transit users should be represented with voting membership on MPO boards. These commenters, including the NACE, all opposed this idea and observed that putting persons representing particular interests on voting boards with elected officials would dilute the representation of duly elected officials. Yet, the Bicycle Federation of America supported putting representatives of bicyclists and pedestrians on voting boards of MPOs to ensure that they have an opportunity to comment on transportation plans and programs. The Texas Natural Resources Conservation Commission, the Orange County Transportation Authority, the Arkansas DOT, and the Minnesota DOT supported a consistent approach to public involvement for both planning activities and the NEPA project



development activities and suggested basing this approach on the current FHWA NEPA regulation (23 CFR part 771). The EPA suggested that the DOT needs to assist community leaders, MPOs, and the public in establishing performance goals and local accountability for public participation.

#### *B. Environmental Justice and Equity*

There were a considerable number of commenters, including the AASHTO and many State DOTs, that opposed any suggestion that equity in the distribution of resources should be a factor used to assess whether environmental justice issues are being adequately addressed. These comments ranged from claims that such language, if included in regulation, would contradict the hard-fought TEA-21 provisions on the allocation of transportation funds to claims that such language would result in preempting States and MPOs from selecting the transportation projects and programs in their respective jurisdictions. Deep concern about this option and opposition to this approach was widespread and shared by MPOs and transit agencies who feel that geographic sub-allocation of funding based on demographics is short-sighted, and an inappropriate way to ensure the principles of environmental justice are honored.

Many commenters indicated that they believe the Executive Order 12898, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, as amended, and current NEPA requirements are sufficient to ensure that environmental justice concerns are addressed. The New Jersey DOT noted that benefits that accrue to users of investments should be a consideration in planning, and that this could possibly be measured in terms of mobility.

The Fulton County and Georgia Department of Environment and Community Development focused on the composition of appointed officials on regional authorities. This agency suggested that such authorities or decision making bodies should reflect the demographics of the region. This agency also suggested that all elements of the population affected by a particular decision should be sought out for their input. In addition, this commenter suggested that controversial project decisions should be analyzed to ensure that they conform to the Environmental Justice Presidential Executive Order. Finally, the commenter suggested that all decisions should be analyzed to ensure that no particular geographic sub-area is being over-burdened with adverse conditions

resulting from transportation investments.

The U.S. Forest Service pointed out that lumping environmental justice and equity together is, in its view, a mistake. It suggested that the best option for public involvement, especially on issues concerning environmental justice, would be those procedures that incorporate collaboration processes early and often in the process.

One agency made the case that we should consider requiring environmental justice analyses of plans, programs and processes, and of major projects. The commenting agency suggested that we could adopt a set of requirements for recipients of our funding. Requirements would include: (1) Community group or nonprofit organization inclusion as equal and full partners in proposed projects; (2) applications for funding include community input in project development; and (3) external reviewers would make project selection decisions.

#### *C. Elimination of Major Investment Study as Separate Requirement*

Section 1308 of the TEA-21 eliminates the major investment study (MIS), described in 23 CFR 450.318, as a separate requirement and calls for integration of the MIS, as appropriate, into the planning and NEPA analyses required under 23 CFR parts 450 and 771. Proponents supporting this legislative action cited instances where major investment studies were said to duplicate NEPA requirements, were time consuming and costly, and importantly, that results were not usefully integrated into the project development activities under NEPA.

The Options Paper articulated four general concepts (distilled from earlier stakeholder comments) focusing on strengthening the linkage between systems planning and project development. We thought this would facilitate broader consideration of transportation system development although, in some cases, commenters had other views as discussed below.

In all of the options, the intent was to faithfully implement the TEA-21 provision that exempts plans and programs from consideration under NEPA. The MPOs would not be required to conduct NEPA analyses on plans. However, they could more effectively utilize the analyses conducted during planning activities to facilitate compliance with NEPA requirements at a project level. If an MPO, as part of its planning process, chose to conduct a NEPA analysis on a plan, it would be a permissible, voluntary decision. In addition to the four options presented

for input, the Options Paper included a number of questions to solicit a better understanding of stakeholders' needs and concerns.

There were a wide range of comments on the elimination of the MIS and on the options presented. The AASHTO felt that we should restrict regulatory language and allow States and MPOs to integrate the principles of the MIS, as appropriate, into planning and programming activities at their discretion. The AMPO suggested that we should allow States the flexibility to do the NEPA analysis in the planning process, as an option, but not as a requirement. In fact, many stakeholders were firmly opposed to any regulatory language integrating NEPA requirements into the planning process.

Most of the commenters supported better linkages between planning and project development and many commenters, including the Minnesota DOT, supported the development of purpose and need during planning studies and sub-regional analysis, but only with the proviso that resource agencies and others allow the use of this information in the NEPA process. On the other hand, the Virginia DOT, for example, was opposed to developing project purpose and need during planning if there is a lack of participation of resource agencies and other parties to the NEPA process who could then require that analysis be redone or revisited during the formal NEPA process. There was near unanimous support for streamlining through reducing duplicative requirements and practices, such as, revisiting issues during project development that were, in commenters views, fully explored during planning.

Many commenters supported options that offer the most flexibility to States and MPOs. The Florida DOT suggested blending the two most flexible options and developing regulatory language that ensures the principles of MIS not already addressed by other Federal regulations and statutes are included in the metropolitan planning and programming requirements. They also suggested that the planning regulation should include requirements for proactive agency coordination and public involvement, collaborative and multi-modal planning analysis of alternatives, and financial capacity analysis of alternatives. The Florida DOT also felt that the States should take the lead on these processes.

The City of Irvine, Texas, suggested that the MIS process served as a good check on the system planning process and was a good way to build consensus and gain public input. Its traffic and



transportation director suggested that expanding the purpose and need statement would help narrow down alternatives prior to the NEPA process. The same individual also suggested looking at the entire process to identify what environmental information could be both practical and useful at each level of analysis.

Additionally, and echoing earlier comments, stakeholders felt that the key to success in whatever approach is taken or required in regulation, is that Federal agencies participate early in the process and that they stay involved throughout the development of, and elimination of, alternatives. Consistent with this suggestion, the EPA commented that the only way they would give standing to previously conducted planning analyses during the NEPA project development stage is if there had been full opportunity for consultation in the metropolitan planning process, and if the resource agencies had "confidence that those plans were developed with environmentally desirable alternatives being considered."

#### D. Cumulative and Secondary Impacts

The Options Paper presented two scenarios which would help promote the consideration and evaluation of the cumulative and indirect effects of projects at a regional or large sub-regional scale, rather than on a project-by-project basis. In metropolitan areas, the former MIS requirement provided an opportunity for appropriate consideration of such effects across a

sub-regional area where major, multiple transportation actions might be needed. With the elimination of the separate MIS requirement, the most logical venue for the consideration of such effects may be in the systems planning processes that support the development of metropolitan or statewide transportation plans.

One approach to implementing cumulative and secondary impact consideration would require an appropriate evaluation of these effects in a regional or sub-regional analysis, thus obviating the need for repetitious, project-by-project review. Such an approach might also provide an opportunity for more effective and efficient mitigation of cumulative impacts and the enhancement of adversely affected resources. Another possibility is to rely on a systems planning analysis of cumulative and indirect effects. In the absence of a robust planning-level review of these impacts, the project-by-project review as part of each NEPA evaluation would be required.

Some commenters, including the AASHTO and the Bicycle Federation of America, interpreted the first option as a requirement for enhancement projects whenever there are cumulative or indirect effects identified. A large number of commenters opposed this approach, but for two different reasons. The Bicycle Federation of America felt that using transportation enhancement funding to counterbalance the adverse impacts of projects is unacceptable and

that such mitigation should be part of the project cost and implementation from the outset. Others, including State DOTs in Utah, New York, and Virginia, believed that a regional or subregional analysis is unrealistic, excessively costly, and of no value unless the study results were accepted by State and Federal environment and resource agencies.

The Oregon DOT observed that the appropriate level to consider cumulative and indirect impacts is at a regional or sub-regional planning level, but not as an analysis *per se*; rather, as a plan to preserve and enhance habitat and preserve resources for future generations. A few examples of plans that accomplish this objective were provided. The New Jersey DOT, Texas DOT, and the American Road and Transportation Builders Association stated that the "science" for evaluating the impacts is not available and that we should provide funding, education, and tools to assist MPOs and States to develop the appropriate analysis tools.

Finally, the Lubbock and Byron College Station MPOs (both from Texas) indicated that cumulative and indirect impacts are, and should be, adequately addressed in consideration of the planning factors and that additional regulatory requirements are unnecessary and redundant.

#### Distribution Table

For ease of reference, a distribution table is provided for the current sections and the proposed sections as follows:

Old section	New section
450.100. ....	1410.100.
450.102. ....	1410.102.
450.104. ....	1410.104.
Definitions .....	Definitions.
None .....	Conformity lapse.
None .....	Conformity rule.
Management System .....	Congestion management system [Revised].
Consultation .....	Consultation [Revised].
Cooperation .....	Cooperation [Revised].
Coordination .....	Coordination [Revised].
None .....	Design concept.
None .....	Design scope.
None .....	Federally funded non-emergency transportation services.
None .....	Financial estimate.
None .....	Freight shipper.
None .....	Illustrative project.
None .....	Indian tribal government.
None .....	Interim Plan.
None .....	Interim Transportation Improvement Program.
None .....	ITS integration strategy.
Maintenance area .....	Maintenance area [Revised].
None .....	Management and operation.
Metropolitan planning area .....	Metropolitan planning area.
Metropolitan planning organization .....	Metropolitan planning organization.
Metropolitan transportation plan .....	Metropolitan transportation plan.
Nonattainment area .....	Nonattainment area.
None .....	Non-metropolitan local official.
None .....	Plan update.

Old section	New section
None .....	Provider of freight transportation services.
None .....	Purpose and need.
Regionally significant project .....	Regionally significant project [Revised].
State .....	State.
State implementation plan .....	State implementation plan.
Statewide transportation improvement program (STIP) .....	Statewide transportation improvement program (STIP).
None .....	Statewide transportation improvement program (STIP) extension.
Statewide transportation plan .....	Statewide transportation plan.
None .....	TIP update.
None .....	Transportation control measures.
Transportation improvement program .....	Transportation improvement program [Revised].
Transportation management area .....	Transportation management area.
Transportation plan update .....	Transportation plan update.
None .....	Twenty year planning horizon.
None .....	Urbanized area.
None .....	User of public transit.
450.200 .....	1410.200.
450.202 .....	1410.202.
450.204 .....	1410.204.
450.206(a)(1) .....	Removed.
450.206(a)(2) through (a)(5) .....	1410.206(a)(1) through (a)(4).
None .....	1410.206(a)(5)[Added].
450.206(b) .....	Removed.
450.208(a) .....	1410.208(a) [Revised].
450.208(b) .....	1410.208(b) [Revised].
450.210(a) .....	1410.210(a) [Revised].
450.210(b) .....	1410.210(e) [Revised].
450.212(a) through (f) .....	1410.212(b) [Revised].
None .....	1410.212(c) [Added].
450.212(g) .....	1410.212(e).
450.214 .....	1410.214 [Revised].
450.216(a) introductory paragraph .....	1410.216(a).
450.216(a)(1) through (a)(7) .....	1410.216(c)(1) through (c)(7).
None .....	1410.216(c)(8).
450.216(a)(8) .....	1410.216(c)(9).
450.216(a)(9) .....	1410.216(c)(10).
None .....	1410.216(b) [Added].
450.216(b) .....	1410.216(d).
450.216(c) .....	1410.216(e) [Revised].
None .....	1410.216(f) [Added].
450.216(d) .....	1410.216(g) [Revised].
None .....	1410.218 [Added].
450.218 .....	1410.220 [Revised].
450.220(a) introductory paragraph .....	1410.222(a) introductory paragraph.
450.220(a)(1) .....	1410.222(a)(1) [Revised].
450.220(a)(2) .....	1410.222(a)(2) [Revised].
None .....	1410.222(a)(3) through (a)(6). [Added].
450.220(a)(3) .....	Removed.
450.220(a)(4) .....	1410.222(a)(7).
450.220(a)(5) .....	1410.222(a)(8).
450.220(a)(6) .....	1410.222(a)(9).
None .....	1410(a)(10) [Added].
450.220(b) and (c) .....	1410.222(b) [Revised].
450.220(d) .....	1410.222(c) [Revised].
450.220(e) .....	1410.222(b)(3) [Revised].
450.220(f) .....	1410.222(d).
450.220(g) .....	1410.222(e).
450.222(a) through (d) .....	1410.224(a) through (d) [Revised].
None .....	1410.224(e) [Added].
450.224 .....	Removed.
None .....	1410.226 [Added].
450.300 .....	1410.300 [Revised].
450.302 .....	1410.302 [Revised].
450.304 .....	1410.304 [Revised].
450.306(a) .....	1410.306(a) [Revised].
450.306(b) and (c) .....	1410.306(b) and (c) [Revised].
450.306(d) and (g) .....	1410.306(f) [Revised].
450.306(e) .....	1410.306(d).
450.306(f) .....	1410.306(e).
450.306(h) through (k) .....	1410.306(g) through (j) [Revised].
450.308(a) through (d) .....	1410.308(a) through (d) [Revised].
450.308(e) .....	1410.308(e) [Added].
450.310(a) .....	1410.310(a) [Revised].

Old section	New section
450.310(b) .....	Removed.
None .....	1410.310(b) [Added].
450.310(c) .....	1410.310(c) [Revised].
450.310(d) .....	1410.310(h) [Revised].
450.310(e) .....	1410.310(d) [Revised].
450.310(f) .....	1410.310(e) [Revised].
450.310(g) .....	1410.310(f).
None .....	1410.310(g) [Added].
450.310(h) .....	1410.310(i).
450.312(a) .....	1410.312(a) [Revised].
450.312(b) .....	1410.312(b).
450.312(c) .....	1410.312(c) [Revised].
450.312(d) .....	1410.312(d).
450.312(e) through (i) .....	1410.312(e) through (i) [Revised].
None .....	1410.312(j) [Added].
450.314(a), (b) and (d) .....	1410.314(a), (b) and (c) [Revised].
450.314(c) .....	Removed.
450.316(a) .....	1410.316(a) [Revised].
450.316(b)(1) .....	1410.316(b) [Revised].
450.316(b)(2) .....	1410.316(c) [Revised].
450.316(b)(3) .....	1410.316(d) [Revised].
450.316(b)(4) .....	1410.316(e) [Revised].
450.316(b)(5) .....	1410.316(f) [Revised].
None .....	1410.316(g) [Added].
450.316(c) .....	1410.316(h) [Revised].
450.316(d) .....	1410.316(i).
None .....	1410.316(j) [Added].
450.318 .....	1410.318 [Revised].
450.320(a) .....	Removed.
450.320(b), (c) and (d) .....	1410.320(a), (b) and (c) [Revised].
450.322(a) .....	1410.322(a) [Revised].
450.322(b)(1) through (b)(7) .....	1410.322(b)(1) through (b)(7) [Revised].
450.322(b)(8) .....	Removed.
450.322(b)(9) through (b)(11) .....	1410.322(b)(8) through (b)(10) [Revised].
None .....	1410.322(b)(11) [Added].
450.322(c) and (d) .....	1410.322(c) and (d) [Revised].
None .....	1410.322(e) [Added].
450.322(e) .....	1410.322(f).
None .....	1410.322(g) [Added].
450.324(a) through (e) .....	1410.324(a) through (e) [Revised].
450.324(f)(1) through (f)(3) .....	1410.324(f)(1) through (f)(3) [Revised].
None .....	1410.324(f)(4) [Added].
450.324(f)(4) and (f)(5) .....	1410.324(f)(5) and (f)(6) [Revised].
450.324(g) through (o) .....	1410.324(g) through (o) [Revised].
None .....	1410.324(p) [Added].
450.326 .....	1410.326 [Revised].
450.328 .....	1410.328 [Revised].
450.330(a) and (b) .....	1410.330(a) and (b) [Revised].
None .....	1410.330(c) [Added].
450.332(a) .....	1410.332(b) [Revised].
450.332(b) .....	1410.332(c) [Revised].
450.332(c) .....	1410.332(a) [Revised].
450.332(d) and (e) .....	1410.332(d) and (e).
450.334(a)(1) through (a)(5) .....	1410.334(a)(1) through (a)(5) [Revised].
None .....	1410.334(a)(6) through (a)(8) [Added].
450.334(b) through (f) .....	1410.334(b) through (f) [Revised].
450.334(g) .....	Removed.
None .....	1410.334(g) [Added].
450.334(h) .....	1410.334(h) [Revised].
450.336 .....	Removed.

### Section-by-Section Discussion

#### Section 1410.100 Purpose

Current § 450.100 would be redesignated as § 1410.100 and a technical correction would be made for a legislative citation.

#### Section 1410.102 Applicability

Current § 450.102 would be redesignated as § 1410.102. The text of this section is unchanged.

#### Section 1410.104 Definitions

Current § 450.104 would be redesignated as § 1410.104. The definition of "conformity lapse" and

"transportation control measure" would be added and would have the meaning given it in the EPA conformity regulation provided at 40 CFR 93.101, as follows:

The term "lapse" means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

The term "congestion management system" would replace the previous definition of "management system" and would have the meaning given in the management system rule (23 CFR part 500).

The term "consultation" would have minor wording changes, but no substantive changes.

The word "programming" would be dropped from the definition of "coordination" to reflect the fact that programming is a subset of the planning process. The project development processes reference would be added to reflect the provisions of proposed § 1410.318.

Definitions are proposed for "design concept," "design scope," "federally funded non-emergency transportation services," "financial estimate," and "freight shipper" for clarification of legislative terminology.

The term "Governor" remains the same.

The terms "illustrative project" and "ITS integration strategy" would be added to reflect new legislative provisions. The term "Indian Tribal Government" is added for clarification.

The terms "Interim Plan" and "Interim Transportation Improvement Program" are added to clarify the basis for advancing exempt and existing and new TCM projects during a conformity lapse. Interim plans and TIPs must be developed in a manner consistent with 23 U.S.C. 134. They must be based on previous planning assumptions and goals; appropriately adjusted for currently available projections for population growth, economic activity and other relevant data. The public must be involved consistent with the regular transportation plan and program development processes. Financial planning and constraint, and, as appropriate, congestion management systems requirements must be satisfied, and interim TIPs must be approved by the MPO and the Governor.

The term "maintenance area" would be revised to reflect the EPA definition used in the conformity regulation at 40 CFR parts 51 and 93.

A definition is proposed for "management and operation" to reflect the new legislative policy direction from the TEA-21.

The terms "metropolitan planning area," "metropolitan planning organization," "metropolitan transportation plan," and "nonattainment area" would remain unchanged, except for legislative references.

A definition of "non-metropolitan local official" would be added to reflect the provisions of the TEA-21 regarding

consultation between the State and these officials.

The terms "plan update," "provider of freight services," and "purpose and need" would be added to provide clarification of terminology.

The definition of "regionally significant" reflects the US EPA conformity rule (40 CFR parts 51 and 93).

The terms "State," "State implementation plan," "statewide transportation plan," and "statewide transportation improvement program" would be unchanged.

A definition for "statewide transportation improvement program extension" would be added for clarification.

The term "transportation improvement program" would be revised slightly. The term "TIP update" would be added to provide information and direction on when a TIP must be updated. Anytime a non-exempt project is added to a TIP, the TIP must be updated. In attainment areas, the TIP must be updated whenever a regionally significant project is added to the TIP.

The definition of "transportation management area" would be unchanged. The terms "twenty year planning horizon," "urbanized area," and "user of public transit" would be added to clarify legislative terminology.

#### **Subpart B—Statewide Planning and Programming**

##### **Section 1410.200 Purpose of Regulations**

Current § 450.200 would be redesignated as § 1410.200. The statement of purpose would be amplified by reflecting the declaration of purpose articulated in the TEA-21. This amplification also supports greater consistency of purpose between metropolitan and statewide planning.

##### **Section 1410.202 Applicability of Regulation**

Current § 450.202 would be redesignated as § 1410.202. The text would be revised to add "project sponsors" as agencies affected by the provisions of this section.

##### **Section 1410.204 Definitions**

Current § 450.204 would be redesignated as § 1410.204. This section would remain the same.

##### **Section 1410.206 Statewide Transportation Planning Process: Basic Requirements**

Current § 450.206 would be redesignated as § 1410.206.

A new § 1410.206(a)(5) would be added. This section articulates the need

for the State to develop and implement a process for demonstrating the consistency of plans and programs with the provisions of Title VI of the Civil Rights Act of 1964 and related legislation. We believe that such processes are already in place and that the clarification of minimum required information and analysis would benefit States and other agencies in meeting the existing requirement in the self-certification statement included in the STIP.

Current § 450.206(b) would be eliminated since it is redundant with § 450.210(a).

##### **Section 1410.208 Consideration of Statewide Transportation Planning Factors**

Current § 450.208 would be redesignated as § 1410.208. Paragraph (a) would be revised by substituting the seven planning factors identified in the TEA-21 for those previously identified by the ISTEA. All parenthetical amplification has been deleted and the wording is that used by the statute. We plan to issue guidance regarding interpretation and application of the planning factors. We welcome suggestions on exemplary State and MPO procedures already in place or under development, and how those might be replicated in other State or MPO planning processes. We also recognize that it will take some time to develop syntheses of current practices and other tools. However, we will work with States, MPOs, and others to ensure that tools and examples are made available in a timely manner.

We are proposing to revise paragraph (b) to focus on other considerations that the TEA-21 states should be addressed in the planning process. Specifically, the concerns of non-metropolitan local officials and Indian Tribal Governments and Federal land managing agencies are spelled out as a source of concerns that shall be considered.

##### **Section 1410.210 Coordination of Planning Process Activities**

Current § 450.210 would be redesignated as § 1410.210. Reflecting the simplification of language provided by the change in planning factors, paragraph (a) would be revised to focus on required planning coordination efforts. This general approach would eliminate the need to spell out in detail all of the specific coordination efforts previously articulated. We believe that the substance of coordination and the process overall remain intact even though the language is vastly simplified. References to the air quality planning process in § 1410.210(b) reflect the

general role afforded the State transportation planning agency in the air quality planning process under 42 U.S.C. 7504 and the desirability of ensuring coordination of the air quality and transportation planning processes. The current wording of paragraph (b) would be retained as § 1410.210(e) with the addition of "safety concerns" to the list of issues to be coordinated.

#### *Section 1410.212 Participation by Interested Parties*

Current § 450.212 would be redesignated as § 1410.212. Overall, current § 450.212 (public involvement) would be broadened to focus on all facets of participation in the statewide planning process. For example, the newly articulated provisions regarding consultation with non-metropolitan officials would be added to this section. In addition, the paragraphs would be redesignated.

Current §§ 450.212(a) through (f) would become § 1410.212(b) and be revised slightly to reflect increased emphasis for public involvement by minorities and low-income populations. The listing of interested parties to be afforded an opportunity to comment is revised to reflect the addition of transit users and freight service providers in statute. This listing reflects the wording of the statute. The FHWA and the FTA believe that the phrase "and other interested parties" reflects the intent of Congress to ensure that all citizens and groups are afforded an opportunity to participate. Comments are solicited as to whether there is a need to further elaborate the listing so as to demonstrate that the specific groups do not constitute an exclusive list of participants. A new § 1410.212(d) would be added to encourage the participation of state air quality and other agencies in the transportation planning process. The existing § 450.212(g) would become § 1410.212(e).

Section 1410.212(b)(2)(vii) makes provision for a periodic evaluation of its public involvement procedures by the State. The FHWA and the FTA believe that the assessment of such processes on a routine basis ensures their effectiveness and enhances continued improvement. The FHWA and the FTA also believe that the effectiveness of public involvement processes can be strengthened through the voluntary development of criteria on which to assess performance by States and MPOs. Where such criteria have been developed by the planning partners, the FHWA and the FTA will consider them in their certification reviews and planning findings, in addition to the

generally applicable requirements for public involvement processes under § 1410.212(b)(2) and § 1410.316(b).

A new § 1410.212(c) focusing on participation by Federal agencies and Indian Tribal Governments would be added to support early involvement by these agencies and governments. Such involvement will facilitate streamlining of environmental decisions and ensure adequate consideration of key interests and viewpoints. The proposed wording for the involvement of Indian Tribal Governments reflects current deliberations within the Executive Branch regarding ways to more fully inform and engage Indian Tribal Governments in Federal decision making processes.

#### *Section 1410.214 Content and Development of Statewide Transportation Plan*

Current § 450.214 would be redesignated as § 1410.214. Two new sections would be added to reflect legislative changes. Proposed § 1410.214(a)(3) would reflect the intelligent transportation system consistency requirement provided under section 5206(e) of the TEA-21. A separate rulemaking process will address the overall policy and procedures for architecture consistency. The wording reflects that portion of the consistency process that would be started in the statewide planning process for non-metropolitan area projects. We are interested in comments and observations regarding the feasibility of this process. In our view, the basic structure would reflect the activities normally conducted during transportation plan development. Proposed minor information collection additions to reflect utilization of electronic information sharing do not appear to be a major burden addition for planning.

In addition, proposed § 1410.214(d) would implement a provision, added by TEA-21, for an optional financial plan for statewide transportation plans. The TEA-21 did not impose a new requirement on the States. Rather, it offers up the option of a financial plan if decided upon by the statewide planning process participants. This section would spell out how this option would be approached through a statewide planning process.

#### *Section 1410.216 Content and Development of Statewide Transportation Improvement Program*

Current § 450.216 would be redesignated as § 1410.216. The provisions of former § 450.216(a)(1) through (a)(9) would be redesignated

and revised as § 1410.216(c) providing detailed information on the STIP. A new § 1410.216(b) would spell out the need to involve certain interests in the development of the STIP. The parties identified are the same as those identified for the development of the plan.

Regarding the detailed information requested for projects identified in a STIP in § 450.216(c), a new element (§ 1410.216(c)(8)) regarding ITS projects funded with highway trust funds would be added. This section reiterates the earlier planning level discussion and would direct that projects meeting the definition in § 1410.322(b)(11) would be included in a regional architecture as indicated in the rulemaking on ITS architecture consistency.

The new wording proposed in § 1410.216(f) articulates the legislative provision of an optional financial plan for STIPs.

#### *Section 1410.218 Relation of Planning and Project Development Processes*

A new § 1410.218 would address an optional approach to linking statewide planning and project development processes in non-metropolitan areas. It mirrors proposed § 1410.318 which would apply to the metropolitan planning process. The intent of this section is to provide States with an option to more effectively rely on planning processes as a foundation for subsequent environmental and other project level analyses. Nothing in this section would mandate that a State adopt the option provided. If a State chose to take advantage of the option, the language lays out a framework to support the State's actions. This section also would make clear that project level actions shall be consistent with the State plan and program (see proposed § 1410.218(e)). For further information, please see the preamble section related to metropolitan planning, proposed § 1410.318.

#### *Section 1410.220 Funding of Planning Process*

The content of the current § 450.218 would be moved here with changes made to the references and the section heading.

#### *Section 1410.222 Approvals, Self-certification and Findings*

Current § 450.220 would be redesignated as § 1410.222. Current § 450.220(a)(2) would be revised slightly. Proposed § 1410.222(a)(3) through (a)(5) would articulate the existing legislative and regulatory authorities. Subsequent paragraphs would be redesignated and remain

generally unchanged. A new § 1410.222(a)(10) would be added.

We are proposing to modify existing § 450.220(b) slightly to indicate the relationship of the planning finding to self-certifications by the State. In addition, current language provided at § 450.220(c) would be redesignated and combined with a new § 1410.222(b) to clarify the relationship of findings with possible Federal actions.

Proposed § 1410.222(c) that details the approval period for a STIP would modify the text of current § 450.220(d). STIP extensions (and by their inclusion, TIP extensions) would be limited to 180 days. Further, no STIP extension would be granted in nonattainment and maintenance areas. We believe that this policy eliminates substantial confusion regarding application of the Clean Air Act (CAA) conformity provisions in nonattainment and maintenance areas. We also believe that the focus should be on ensuring regular STIP updates, rather than finding a way to maintain funding flows that may conflict with the provisions of the CAA. The overall limit on extensions serves the same general purpose for attainment areas of ensuring that updates are accomplished rather than continuing to rely on out of date documents.

#### *Section 1410.224 Project Selection*

Current § 450.222 would be redesignated as § 1410.224 and the references to funding categories updated. Generally, however, it would remain unchanged. Proposed new paragraph (e) would provide the option for expedited procedures where agreed to by the planning participants. The current topic of this section (§ 450.224 phase-in requirements) would be eliminated.

#### *Section 1410.226 Applicability of NEPA to Transportation Planning and Programming*

This section simply proposes to restate the provisions of the TEA-21 which direct that decisions by the Secretary regarding plans and programs are not Federal actions subject to the provisions of the NEPA.

#### **Subpart C—Metropolitan Transportation Planning and Programming**

#### *Section 1410.300 Purpose of Planning Process*

Current § 450.300 would be redesignated as § 1410.300. This statement would remain essentially unchanged. The exceptions are a minor wording change for clarity of Federal expectations with regard to plan content

and the addition of the word "management" to reflect the revised declaration of policy in 23 U.S.C. 134(a) as revised by the TEA-21.

#### *Section 1410.302 Organizations and Processes Affected by Planning Requirements*

Current § 450.302 would be redesignated as § 1410.302. The principal change would be to add organizations charged with "project development" in metropolitan areas to the affected organizations. This would reflect the general emphasis of the revised rule on more efficiently and effectively linking planning and project development as a means to streamlining decision making and towards ensuring that projects are based on the planning process. The statutory authorizing language reference would be added also.

#### *Section 1410.304 Definitions*

Current § 450.304 would be redesignated as § 1410.304. This section would remain unchanged with the exception of referencing definitions in 49 U.S.C. Chapter 53.

#### *Section 1410.306 What is a Metropolitan Planning Organization and How Is It Created*

Current § 450.306 would be redesignated as § 1410.306. Minor changes are proposed for existing § 450.306(a) to provide clarity regarding the designation of multiple MPOs serving a single metropolitan area. The wording would more clearly emphasize a preference for not designating more than one MPO in metropolitan areas. We believe that this is consistent with the intent of legislative language changes and the principles of comprehensive transportation planning for metropolitan areas.

Current §§ 450.306(b) and (c) would remain unchanged. Current § 450.306(d) and (g) would be combined and redesignated as § 1410.306(f). § 450.306(e) would be redesignated as § 1410.306(d) and § 450.306(f) would be redesignated as § 1410.306(e). Editing for clarity of intent would simplify the language. Current § 450.306(e) would be redesignated as § 1410.306(d). Sections 450.306(h) through (k) would be redesignated as §§ 1410.306 (g) through (j), respectively, and revised.

#### *Section 1410.308 Establishing the Geographic Boundaries for Metropolitan Transportation Planning Areas.*

Current § 450.308 would be redesignated as § 1410.308. Revisions made by the TEA-21 to 23 U.S.C. 134 require the modification of existing § 450.308, which also would be edited

for clarification of language. Boundaries in effect as of June 9, 1998, the date of presidential signature for the TEA-21, would remain in effect unless modified by the policy board of the MPO in cooperation with the Governor. The provisions of 23 U.S.C. 134, as modified by the ISTEA, required planning area boundaries to be extended to the limits of the nonattainment area where that area was larger than the transportation planning area.

New MPOs designated after June 9, 1998, would have to take into account the existence of non-attainment and maintenance areas and reflect them as agreed to by the Governor and local officials in the proposed metropolitan planning area boundaries.

In either case, the existing MPO or new MPO, non-attainment and maintenance areas left outside the metropolitan planning areas would have to be addressed in an agreement between the State and the MPO as proposed at paragraph § 1410.310(f).

The option of extending the metropolitan planning area boundary to the limits of the metropolitan statistical area would be retained as provided in the statute. This continuation and the changes discussed in the preceding paragraphs are captured in proposed revisions included in § 1410.308(a).

The wording of current § 450.308(b) would remain unchanged. The provisions of current § 450.308(c) would be slightly modified for clarification. No changes are proposed for § 450.308(d).

A new § 1410.308(e) proposes to address the expenditure of Surface Transportation Program funds attributable to a Transportation Management Area (TMA). The intent of the section is to more clearly state, what has been the FHWA and the FTA policy since 1992, that these funds cannot be expended outside the boundaries of the metropolitan area. They may be expended anywhere inside the metropolitan area including areas outside the urbanized area.

#### *Section 1410.310 Agreements Among Organizations Involved in the Planning Process*

Current § 450.310 would be redesignated as § 1410.310. Current § 450.310(a) would be retained in its current form except for the elimination of a reference to corridor and subarea studies. A new proposed § 1410.310(b) would state the overall relationship between planning and project development activities. This section would support the option for conducting project development activities as planning activities under the general relationship between

planning and project development as established under the proposed new § 1410.318.

Current § 450.310(c) would be redesignated as § 1410.310(c) and the text would remain unchanged except for minor wording revisions for clarification. Section 450.310(d) would be redesignated as § 1410.310(h) and revised for clarity. Current § 450.310(e) would be revised by dropping the reference to a definition of a prospectus in § 450.104. A definition is not required since the nature of prospectus is well established in practice as a statement of ongoing planning activities that continue from year-to-year as a foundation for producing transportation plans and programs.

The current § 450.310(f) would be redesignated as § 1410.310(e) and modified slightly by a wording change to support the revisions to the air quality and transportation planning area boundary relationship. The change is intended to suggest that actions that would leave portions of nonattainment and maintenance areas outside a metropolitan transportation planning area, but contiguous to such an area, should be addressed in consultation with the FHWA, the FTA, and the EPA. The decision to leave such areas outside a metropolitan planning area is the responsibility of the Governor and the MPO acting cooperatively.

A proposed new § 1410.310(g) has been added to reflect the impact of section 5206(e) of the TEA-21. The proposed section requires an agreement among agencies planning and implementing ITS projects and is intended to ensure that the planning and operating agencies specifically agree on an approach to integrated ITS implementation consistent with the options provided in the National ITS Architecture. This provision would direct that this relationship should be covered by agreement within the metropolitan planning area and addresses the policy and operational issues affecting ITS implementation. Where current agreements do not already address these relationships, they would be modified to reflect the provisions of this section. Where possible, existing agreements, per the provisions of § 1410.310(i), would be modified to incorporate the ITS integration strategy required under proposed § 1410.322(b)(11).

A new proposed § 1410.310(h) would permit a single agreement for all activities under § 1410.310 where agreed to by the participants. The wording in current § 450.310(h) remains unchanged from its current text and

would be included in a redesignated § 1410.310(i).

#### *Section 1410.312 Planning Process Organizational Relationships*

Current § 450.312 would be redesignated as § 1410.312. Existing § 450.312(a) would be redesignated as § 1410.312(a) and modified in several places to reflect wording changes in the subsequent provisions of §§ 1410.314 through 1410.322. A phrase would be made to reflect international border planning with Canada and Mexico.

The text of current § 450.312(b) would be redesignated as § 1410.312(b) and remain unchanged.

The organization of current § 450.312(c) and some of the previous content would be modified and redesignated as § 1410.312(c). The content modifications are intended to clarify how MPO transportation planning activities and planning products are related to air quality planning activities and products. Under 42 U.S.C. 7504, MPOs and State transportation planning organizations are expected to have a formal role in air quality planning. At another level, the transportation and air quality planning processes would work more efficiently if the responsible agencies were more actively engaged in each other's processes. Hence, the proposed rule would more explicitly direct MPOs to participate in air quality planning activities. We would expect that the air quality planning agencies, under the U.S. EPA's conformity regulation (40 CFR parts 51 and 93), would be actively engaged in the transportation planning process. The development of transportation control measures is specifically revised to clarify that new TCMs proposed for funding with FHWA and/or FTA transportation funds or requiring an FHWA or FTA approval can occur during a conformity lapse, if new TCMs are included in an interim plan and interim TIP that satisfy the provisions of this part and are approved into a SIP with identified emission reduction benefits (specified but not necessarily credited in the applicable SIP). The proposals herein implement and clarify the planning regulations consistent with the "National Memorandum of Understanding between the US Department of Transportation and the US Environmental Protection Agency," which was signed on April 19, 2000. This memorandum of understanding outlines procedures for advancing new TCMs during a conformity lapse.

Current § 450.312(d) would be redesignated as § 1410.312(d) and remain unchanged.

Minor wording changes would be made to current § 450.312(e) [proposed § 1410.312(e)] to clarify required coordination in circumstances where more than one MPO is involved in transportation planning for a contiguous metropolitan area, including multi-state areas.

Proposed § 1410.312(f) (current § 450.312(f)) would be revised for text clarity. Proposed § 1410.312(g) (current § 450.312(g)) would be revised to remove a specific reference to cooperative development of the congestion management system (CMS) since it is incorporated in the management system regulation provided at 23 CFR part 500.

Current § 450.312(h) is redesignated as § 1410.312(h) and revised. Proposed § 1410.312(i) (current § 450.312(i)) would be revised by replacing the words "involved appropriately" with "consulted" to more accurately reflect the statutory intention.

A new § 1410.312(j) is proposed to reflect the legislative changes of the TEA-21 which added several new discretionary grant programs. This section asserts that the projects (other than planning and research activities) funded through these programs must be addressed through the transportation planning process and included, as appropriate, in transportation plans and programs. Planning and research activities funded under the referenced programs are addressed in the Unified Planning Work Programs (UPWP) for each metropolitan planning area.

#### *Section 1410.314 Planning Tasks and Work Program*

Current § 450.314(a) would be redesignated as § 1410.314(a). The provisions of this overall section remain largely unchanged except for wording revisions for clarity or to reflect modifications in other sections, e.g., elimination of the MIS proposed under § 1410.318. One change to § 450.314(a) proposes to drop the reference to TMAs. This is intended to suggest that all MPOs have a responsibility to meet the requirements of this section. It does not prevent a smaller, attainment area MPO from proposing a prospectus or a simplified work program. Paragraph (c) of current § 450.314 would be revised and redesignated as § 1410.314(c). A new paragraph (d) will be added as § 1410.314(d).

#### *Section 1410.316 Transportation Plan Development*

Current § 450.316 would be redesignated as § 1410.316. Overall this section has extensive proposed revisions for several reasons. The



metropolitan planning factors were revised by the TEA-21; reduced in number from 16 to 7. The wording in § 450.316(a) would be revised by substituting the seven planning factors identified in the TEA-21 for those previously identified by the ISTEA. All parenthetical amplification would be removed and the wording would be the same as that used in the statute. We plan to issue guidance regarding interpretation and application of the planning factors. This will be especially true of new planning goals, such as safety, environmental considerations, and operations and management, which have been added to the list.

The US EPA has suggested that the FTA and the FHWA amplify and elaborate the detail in the regulation regarding the meaning of the planning factors. The agencies have kept the language as stipulated in the statute. However, the agencies believe that substantial benefits can be realized by States and MPOs in applying the planning factors, under §§ 1410.214 and 1410.316(a), aggressively, most notably in supporting the provisions of § 450.318 below. The planning factors can serve as a key focal point for developing plans and programs and MPOs and States may develop specific rationales to guide their utilization in the plan development process. Indeed, where States and MPOs choose to develop their own performance criteria to monitor the results of planning, they may be well served by utilizing the planning factors as a base for those criteria. The FTA and the FHWA will support efforts by States and MPOs to utilize such criteria by addressing them in Federal reviews and assessments. In addition, the agencies will seek to develop specific examples of how the planning factors can support effective plan development and environmental streamlining. Streamlining, as an activity to reduce project level burden and delay, could be more readily achieved if the planning process provides an early consideration of the planning factors.

The FHWA and the FTA welcome suggestions on exemplary State and MPO procedures or data collection efforts already in place or under development and how those might be replicated in other State or MPO planning processes. We are interested also in specialized training efforts, e.g., safety, that may have been developed or needed by States and MPOs. We also recognize that it will take some time to develop syntheses of current practices and other tools. However, it is our intent to work with States, MPOs, and others

to ensure that tools and examples are made available in a timely manner.

The public involvement provisions would be modified for clarity and would reflect the provisions of Presidential Executive Order 12898 on Environmental Justice and implementing DOT and FHWA orders. Similar changes have been made regarding references to compliance with the provisions of Title VI of the Civil Rights Act of 1964. The organization of § 450.316 would be modified slightly to reflect these changes and to provide clarity in understanding them.

The listing of interested parties to be afforded an opportunity to comment is revised to reflect the addition of transit users and freight service providers in statute. This listing reflects the wording of the statute. The FHWA and the FTA believe that the phrase "and other interested parties" reflects the intent of Congress to ensure that all citizens and groups are afforded an opportunity to participate. Comments are solicited as to whether there is a need to further elaborate the listing so as to demonstrate that the specific groups do not constitute an exclusive list of participants.

Section 1410.316(b)(9) makes provision for a periodic evaluation of its public involvement procedures by the State. The FHWA and the FTA believe that the assessment of such processes on a routine basis ensures their effectiveness and enhances continued improvement. The FHWA and the FTA also believe that the effectiveness of public involvement processes can be strengthened through the voluntary development of criteria on which to assess performance by States and MPOs. Where such criteria have been developed by the planning partners, the FHWA and the FTA will consider them in their certification reviews and planning findings.

Relatively small scale modifications to the public involvement provisions are proposed as follows: (1) The provision of timely information will be modified to encourage engagement of the public during the early stages of plan and TIP development; (2) demonstration of timely response to comments received would be revised to highlight response to input from minority and low-income populations; and (3) periodic MPO evaluations of public involvement effectiveness would now include an emphasis on the success obtained in engaging minority and low-income populations.

Current § 450.316(b)(2) is proposed to be redesignated as § 1410.316(c). Additional attention is drawn to the provisions of Executive Order 12898

and implementing DOT and FHWA orders. Specifically, data necessary for the purposes of conducting planning analyses for plan development are identified as contributors to the demonstration of compliance with the Executive Order. We are required to assure compliance with the Executive Order and will rely on the data identified under this section for that purpose. In addition, the statutory and regulatory requirements identified in this section apply to State DOTs, MPOs, and transit operators. Consequently, additional data and analyses are proposed as a basis for demonstrating that plans and resulting programs will be consistent with the referenced statutory requirements. Additional guidance will be issued to refine and amplify the basic framework established by these provisions. We believe, however, that much of the proposed data specification was previously required for assertions of compliance with Title VI and related statutory authorities and, hence, should not require a major new data collection effort.

In addition to the revised requirements of this section, the FHWA and the FTA continue to encourage attention to the selection of members of boards and committees that represent the demographic profile of the metropolitan planning area served. The ability to meet the needs of the community is enhanced by efforts designed to provide voice to as many segments of its membership as possible. The FHWA and the FTA solicit comments regarding additional strategies that may be effective in serving the interests of inclusiveness in transportation decision making.

Current §§ 450.316(b)(3) through 450.316(b)(5) would be redesignated as § 1410.316(d) through (f). Current § 450.316(c) would be redesignated as § 1410.316(g) and revised for clarity. Current § 450.316(d) is proposed to be redesignated as § 1410.316(h).

Proposed § 1410.316(i) is offered to encourage the coordination of federally funded non-emergency transportation services per the requirements of section 1203(d)(4) of the TEA-21. The section simply restates the legislative language.

#### *Section 1410.318 Relation of Planning and Project Development Processes*

The TEA-21 eliminates the major investment study (MIS) as a separate requirement as set forth in the planning regulations and calls for integration of the requirement, as appropriate, into the planning and NEPA analyses required under proposed 23 CFR parts 1410 and 1420. Accordingly, current § 450.318



would be revised to focus on the relationship between the planning and project development processes.

Section 1308 of the TEA-21 directs the US DOT Secretary to eliminate the separate MIS and its elements and integrate the remaining aspects of the MIS into the planning and NEPA regulations. The FHWA and FTA have attempted to do this by focusing on the fundamental basics of the MIS process, i.e., the cooperative relationship of planning and project development agencies, the early engagement of permit and resource agencies, flexible definition of the need to do analyses as decided by the participants and an appropriate level of public involvement. The MIS process did not require a specific methodology for studying alternatives, a specific set of alternatives to study, a particular format for reports, a specific public involvement or analytical process, or a specific set of projects to which the MIS applied. The US EPA has specifically suggested that the MIS process required and should require the use of cost benefit, costs effectiveness analysis and/or other related analytical techniques. The logic of this proposal is that early, effective consideration of social, environmental and economic considerations in planning analyses should permit more expedited consideration of these same issues, at a more micro level of detail, for subsequent NEPA analyses. By linking the planning and project development processes more effectively, the participants can reduce time required, analytical redundancy and process requirements by utilizing previously conducted work as a basis for subsequent analyses and efforts. It is the belief of the FTA and the FHWA that an aggressive utilization of the options provided here can strengthen the planning process and streamline the project development process substantially. The agencies are specifically interested in comments that address the extent to which the remaining aspects of the MIS process have been included in this proposal and suggestions for encouraging States and MPOs to more effectively take advantage of the options provided herein.

The overall structure of the relationship emphasizes alternatives for planning and sponsor agencies to integrate decision processes to take advantage of potential streamlining opportunities and for early consultation among the MPOs, State DOTs, and transit operators. The planning process is charged with providing an initial statement of purpose and need for proposed transportation improvements, identifying and evaluating alternatives

(including, but not limited to, design concept and scope) and selecting an alternative and including it in the plan. This statement would not necessarily lead to a determination of purpose and need on a project-by-project basis for transportation improvements normally grouped (not specified individually) in a plan. An alternative could be a programmatic statement of purpose and need that identifies the basis for investing resources in a given transportation area such as safety or pavement resurfacing.

The consideration of alternatives and other planning level analyses done in support of plan development do not eliminate the need for considering all reasonable alternatives during the NEPA process. However, to the extent that the planning participants anticipate the required consideration of all reasonable alternatives in the planning process, they will significantly enhance, in our view, the efficiency of the NEPA process. Well documented, thorough planning analyses should permit the NEPA process to accept this information as a sound basis for reducing the alternatives considered and the detail required for others in the NEPA process. Provision also is made for policy preferences and guidance from planning policy bodies to be included on the record for consideration in subsequent decision steps.

Examples of issues that might be covered in the planning level consideration of alternatives include: the consideration of alternatives that in the past have been rejected for not fully meeting traditional concepts of purpose and need; more broadly defined purpose and need statements during the planning stage so that a full range of modal alternatives are considered; an alternatives analysis that examines "no-build" alternatives that use transportation demand strategies; and, flexibility to encourage the selection of alternatives which may have lower than originally desired levels of transportation service if there are cost, time, and impact savings. The FHWA and the FTA will work with the US EPA on guidance and training in this regard.

A number of alternative sources of information are identified as a basis for the development of purpose and need, a planning level analysis of alternatives (primarily at the level of concept and scope) and specification of a project for inclusion in the transportation plan. These information sources are utilized at the discretion of participating agencies (MPO, State DOT, and transit agency) acting jointly. The underlying logic of the proposal is that if the options to document thoroughly and

analyze fully are chosen, this effort will lead to expedited analytical efforts in subsequent NEPA analyses. Less robust analytical and documentation efforts would force elaboration and analysis of alternatives during the NEPA process.

The utilization of planning analyses as a basis for project development actions is explained. In particular the regulatory language specifies that the results of planning analyses shall serve as input to the environmental process under proposed 23 CFR part 1420 (current part 771), and other project level actions. Proposed § 1410.318(c) references the contents of proposed § 1420.201 to provide a frame of reference to data and analytical expectations in subsequent NEPA process steps, i.e., the standard of analysis expected by the NEPA process for projects. Planning, systems level, analyses that address these data and analytical requirements can improve the efficiency of the NEPA process and reduce data and analytical efforts required.

The ability to streamline the planning and environmental relationship is dependent, in part, on appropriate decisions made by the planning participants. They can choose to develop a rigorous basis for establishing transportation purpose and need, identifying alternatives for evaluation, and assessing these alternatives through the planning process. Alternatively, they can choose to apply minimal analytical techniques. At the time the NEPA analyses are undertaken for project development, the agencies participating in that process will review the materials provided by the planning process. Minimal analyses in planning will have to be supplemented and elaborated to satisfy the needs of the NEPA process. More robust planning analyses should allow the NEPA process to reduce the need for revisiting and re-evaluating planning level studies and instead proceed to focus on project level considerations of location and design. Consequently, the consideration of alternatives should be more quickly and efficiently accomplished.

A similar option exists with regard to documentation of planning results. A set of planning activities to be documented to facilitate this linkage is specified in § 1410.318(a)(2). The option to document is a discretionary option of the planning participants in cooperation with appropriate project sponsors. The focus is not on the details of documents but rather on the act of documenting the results of analyses and studies. Robust analyses coupled with sound documentation will permit more effective linkage and utilization of

planning analyses and data collection in subsequent NEPA analyses.

The early involvement of Federal and State environmental and permit agencies is encouraged under proposed § 1410.318(d) to facilitate linking planning and environmental processes. The involvement of the FTA is required where planning studies are proposed to satisfy requirements of the Major Capital Investment Program administered by the FTA under 49 CFR part 611. The TEA-21 directive that Federal decisions on plans and programs are not considered a Federal action for NEPA purposes is restated in proposed § 1410.318(f) (the FHWA and the FTA do not approve plans but they do approve the State TIP which is not subject to NEPA). Finally, the basis for Federal project actions in plans and TIPs is specifically stated. The intent of this latter provision, in proposed § 1410.318(g), is to clearly substantiate the need for projects to be in plans before Federal actions can be taken on them. A particular point is made that project actions and the appropriate phase of a project must be in a plan and TIP before project actions can be taken.

#### *Section 1410.320 Congestion Management System and Planning Process*

Current § 450.320 would be redesignated as § 1410.320 and would be revised to reflect the impact of the issuance of the Management System rule (23 CFR part 500) and the National Highway System Act of 1995, Public Law 104-59, 109 Stat. 568. The latter made management systems optional, except for the congestion management system in transportation management areas (TMA). Hence, the proposed language focuses on the continuing provisions of the congestion management system in TMAs, including the limitation on single occupant vehicle capacity increases which remains unchanged under the TEA-21. With the exception of current § 450.320(a) which would be removed, the remainder of the overall section is generally unchanged.

One option considered, but not included in this proposal, is to revise 23 CFR part 500 by transferring the provisions dealing with the congestion management system to the metropolitan planning rule. The FHWA and the FTA would welcome comments on this idea with regard to its utility and appropriateness.

#### *Section 1410.322 Transportation Plan Content*

Current § 450.322 would be redesignated as § 1410.322. Current

§ 450.322(a) would be modified by adding a discussion of data assumptions for plan updates. Specifically, the language would clarify what must be considered in preparing a plan update, as a minimum. It also would reaffirm that the MPO must approve the content of a new plan or reaffirm existing plan content in conducting an update. We have chosen to provide this clarification in response to requests from stakeholders and to emphasize that a plan is a critical document. Piecemeal revisions that incrementally revise plans do not constitute an appropriate, accurate or meaningful basis for plan development, implementation, and/or subsequent decision making.

A proposed minor revision would be made to § 450.322(b)(2) to reflect the emphasis on management and operation of the transportation system.

Current §§ 450.322(b)(3) through (b)(6) would remain unchanged with the exception of minor edits for clarity. Current § 450.322(b)(7) would be revised to reflect the elimination of the MIS and redesignated as § 1410.322(b)(7). Current § 450.322(b)(8) would be removed. Current §§ 450.322(b)(9) and (10) would be redesignated as §§ 1410.322(b)(8) and (9), respectively.

Current § 450.322(b)(11) would be redesignated as § 1410.322(b)(10) and remain generally unchanged except for the addition of the reference to "illustrative projects." Illustrative projects have no standing for transportation or air quality purposes until such time as a financing source has been identified and they have been formally amended into the plan by action of the MPO. At that point they could be added to a TIP as a project to be advanced. We expect that the MPO would coordinate its actions with the State DOT and transit operator and vice versa. Once formally added to a plan and TIP, these projects may be included in regional conformity findings, advanced, and subject to appropriate project level actions by the FHWA and the FTA.

The remainder of § 450.322(b)(10) would remain generally unchanged since the TEA-21 either did not change key provisions or reenforced previous provisions required through regulation (e.g., cooperative estimates of revenue for plan development). With regard to estimated revenues, we have opted to rely on a cooperative process of State, MPO and transit operator estimation based on local preferences and arrangements. We would support the cooperative process through the provision of guidance and identification of good practices for emulation.

A new § 1410.322(b)(11) proposes to focus on intelligent transportation systems (ITS) and the National ITS Architecture. As provided in section 5206(e) of TEA-21, we have issued interim guidance on compliance with this new legislative requirement. This proposed wording is intended to be an integral element of the proposed regulatory issuance on compliance with this requirement. A companion NPRM issuance will be made for project development and national policy on consistency with the National ITS Architecture. It will support planning as the initial stage at which this consistency must begin. We are issuing the planning component through this NPRM and solicit comments on this proposal.

The existing wording of § 450.322(c) would be redesignated as § 1410.322(c) and would be modified to add users of public transit and freight shippers as directed by the TEA-21. A minor modification would be made to § 450.322(d) (proposed § 1410.322(d)) to clarify that if either the MPO or we fail to make a conformity determination, the Governor or the Governor's designee must be notified.

A new § 1410.322(e) would refine the operating approach to plan changes and updates. The question of a 20-year horizon has received substantial discussion as indicated previously. As part of the clarification of the meaning of the term "20-year horizon," we are proposing that a plan is valid for transportation purposes if it has a twenty year horizon at the time of adoption. If no major changes are made to the plan, e.g., the addition of a non-exempt project, then the plan would remain valid as a basis for Federal actions until its next regularly scheduled update. This proposal also indicates that it is our intent that conformity determinations by the FHWA/FTA be made as close as possible to the MPO plan conformity finding, i.e., as soon as possible after MPO plan adoption and conformity determination actions are taken. The three year period and the twenty year horizon would start at the point a Federal conformity determination is made on the plan for a nonattainment or maintenance area. This will eliminate confusion over the validity of the transportation plan in relation to air quality conformity determination. A new conformity determination would be required within eighteen months of certain SIP actions according to 40 CFR 93.104, even if the three year period had not expired at the time. In an attainment area, the plan would be valid for five

years from MPO approval so long as no regionally significant projects are added.

The current requirement of § 450.322(e) that new plans and plan updates be provided to us would be included in proposed § 1410.322(f).

A new § 1410.322(g) would be added to authorize utilization of an interim plan during an anticipated conformity lapse. It is the intent of this section to permit funding of existing exempt, transportation control measures (TCMs) and other projects that can advance under a conformity lapse in accordance with 40 CFR parts 51 and 93. New TCMs under this provision can only be approved or funded during a conformity lapse when they have been included in an approved SIP with identified emission reduction benefits (but not necessarily credited in the applicable SIP). Inclusion in the SIP would have to occur before such TCMs can be advanced into completion of the NEPA process, design, right of way acquisition and/or construction). An interim plan may be used during a conformity lapse to advance projects that can proceed according to 40 CFR parts 51 and 93, including existing TCMs and existing and new exempt projects. It is the expectation of the US DOT that this provision would be utilized for new TCM projects where a conformity lapse would persist for six months or longer. An interim plan may be used for periods of less than six months to advance existing TCM and existing and new exempt projects.

#### *Section 1410.324 Transportation Improvement Program Content*

Existing §§ 450.324(a) through (e) would have minor modifications to the text and be redesignated as §§ 1410.324(a) through (e). Please note, however, that an addition to proposed § 1410.324(b) would reflect the changes in proposed § 1410.222(c) to limit STIP/TIP extensions to 180 days in attainment areas. The prohibition against STIP/TIP extensions in nonattainment and maintenance areas is present also in proposed § 1410.324(b). Additionally, the current wording reflects TEA-21's confirmation of the previous regulatory provisions; most notably, the cooperative estimate of available funds. As indicated above, the estimation process would be achieved through locally identified processes.

In existing § 450.324 (proposed § 1410.324), proposed paragraph (f)(1) would be unmodified. Paragraph (f)(2) would be modified to reflect changes in funding categories (e.g., minimum guarantee, etc.) and the elimination of the exemption for Motor Carrier State Assistance Program and 23 U.S.C. 402

safety program projects from being included in a TIP. The exemption for these two categories would be removed to reflect the ITS consistency requirement discussed above and the requirement that transportation projects funded with Federal-aid funds must satisfy the requirements of 23 U.S.C. and, where appropriate, be found conforming for air quality purposes.

In current § 450.324(f)(3) (redesignated as § 1410.324(f)(3)), "approval" would be changed to "action" to reflect a broader concept regarding the range of our activities taken with regard to projects, i.e., not all of them are labeled "approvals" but, yet, they must still be based on plans and programs.

Current §§ 450.324(f)(4) and (f)(5) would be modified and redesignated as §§ 1410.324(f)(5) and (f)(6), respectively. The changes are intended to clarify that all regionally significant projects in air quality non-attainment and maintenance areas, whether funded federally or otherwise, would be included in the metropolitan TIP. This allows full consideration of all projects in a regional conformity determination and ensures that the provisions of the CAA are met.

The three year conformity period for a TIP would start from the date of the conformity determination by the FHWA and the FTA. It is our expectation that the time period from the point of a Federal conformity determination on the TIP and its inclusion by the Governor's action in the STIP and the subsequent gubernatorial approval of the STIP and planning finding and STIP approval by the FHWA and the FTA would be monitored to ensure efficient and expeditious processing by all parties.

With the exception of proposed minor changes for clarification regarding fiscal constraint, § 450.324(g) (proposed § 1410.324(g)) would be unchanged. The changes would reiterate the need for specification of funding sources for projects included in a TIP. The wording of existing § 450.324(h) (proposed § 1410.324(h)) would be unchanged. The content of § 450.324(i) (proposed § 1410.324(i)) would be modified to indicate that only regionally significant projects funded under Chapter 2 of 23 U.S.C. need be specifically identified in a TIP. These projects are typically "Federal Lands" projects, e.g., Indian Reservation Roads, National Park Service Road, etc. The existing §§ 450.324(j) through (m) (proposed § 1410.324(j) through (m)) would be generally unchanged except for statutory reference modifications.

Existing § 450.324(n) (proposed § 1410.324(n)) would be modified to include an indication that projects are to be included on the TIP until fully authorized. A new § 1410.324(n)(5) is proposed to require that the TIP shall serve as the basis for an annual listing of projects, supplemented as appropriate, to ensure adequate public information regarding projects funded with Federal monies. Both changes are geared at ensuring greater clarity as to what projects must be included on a TIP.

The second change to proposed § 1410.324(n) serves another purpose—encouraging greater public knowledge regarding which projects have been advanced. In this case, we are opting to allow the planning participants the flexibility to design a process to comply with the legislative directive provided in section 134(h)(7)(B) of title 23 U.S.C. for an annual listing of projects. While the statute focuses on the MPO, we believe that the State DOT, transit operator, and the MPO operating jointly can produce the required information.

The MPO, in cooperation with its planning partners would, under this proposal, utilize the TIP as the basis for the annual listing. Each year the participating agencies would identify the projects that advanced (or did not) and publish the "list" jointly, in a fashion consistent with the public involvement provisions for the metropolitan area. Changes to the TIP would be acknowledged and reflected in modifications to the annual listing as appropriate.

Current § 450.324(o) would be redesignated as § 1410.324(o) with no other changes.

In general, we believe that it may be possible to further streamline the information and procedural requirements expected of TIPs, particularly with regard to financial information. We would be interested in any possible information reduction options that may be possible while maintaining the principles and practices of sound public involvement and fiscal constraint.

A new § 1410.324(p) would be added to authorize utilization of an interim TIP during an anticipated conformity lapse. It is the intent of this section to permit funding of existing exempt, transportation control measures (TCMs) and other projects that can advance under a conformity lapse in accordance with 40 CFR parts 51 and 93. New TCMs under this provision can only be approved or funded when they have been included in an approved SIP with identified emission reduction benefits (but not necessarily credited in the

applicable SIP). These TCMs would have to be included in the SIP before they can be advanced into completion of the NEPA process, design, right of way acquisition and/or construction). An interim plan may be used during a conformity lapse to advance projects that can proceed according to 40 CFR parts 51 and 93, including existing TCMs and existing and new exempt projects. It is the expectation of the US DOT that this provision would be utilized for new TCM projects where a conformity lapse would persist for six months or longer. An interim TIP may be used for periods of less than six months to advance existing TCM and existing and new exempt projects.

#### *Section 1410.326 Transportation Improvement Program Modification*

Current § 450.326 would be redesignated as § 1410.326. The only change to this section would be to clarify when a new conformity determination is necessary. The addition of non-exempt projects, or replacement of an existing TIP by a new TIP, requires a new conformity determination. Similarly, moving a project or a phase of a project from year four, five, or later of a TIP to the first three years would be an amendment and require a new conformity determination. We believe that frequent modification of TIPs through the addition of non-exempt projects is inconsistent with the principles of fiscal constraint and public involvement. Hence, we intend to make it clear that a new conformity determination is necessary unless the changes to TIPs are minor, i.e., addition or deletion of exempt projects.

#### *Section 450.328 Transportation Improvement Program Relationship to Statewide TIP*

Current § 450.328 would be redesignated as § 1410.328. The text would remain unchanged.

#### *Section 1410.330 Transportation Improvement Program Action by FHWA/FTA*

Current § 450.330 would be redesignated as § 1410.330. The provisions of current §§ 450.330(a) and (b) would be redesignated as §§ 1410.330(a) and (b). There would be very minor wording changes for clarification or technical corrections. A new § 1410.330(c) would be added to address the addition of "illustrative projects" to TIPs. This paragraph makes it clear that no Federal action may be taken on these projects until they become formally included in the TIP as indicated previously.

Consistent with the overall purposes of the planning process and the need for Federal actions on planning processes and products as appropriate as described in this proposed regulation, project funding is contingent on the existence of a plan and TIP. If a plan and TIP are not updated as required herein, new funding actions cannot be taken.

#### *Section 1410.332 Selecting Projects from a TIP*

Current § 450.332 would be redesignated as § 1410.332. Current §§ 450.332(a), (b) and (c) would be redesignated as §§ 1410.332(b), (c) and (a), respectively, with only citation corrections to the text. Proposed §§ 1410.332(d) and (e) (current §§ 450.332(d) and (e), respectively) would include citation corrections and in paragraph (e) the word "will" would become "shall" to reflect the force of law under the CAA. Consistent with previous program practice by the FHWA and the FTA, selecting a project for advancement from year two or three of a TIP does not require a TIP amendment.

#### *Section 1410.334 Certifications*

Current § 450.334 would be redesignated as § 1410.334. Current § 450.334(a) would have three new paragraphs (a)(6) through (a)(8) under this proposal. These paragraphs add references to compliance with additional Federal statutes but do not represent new compliance requirements. These requirements previously existed and the regulations would be revised to point out their existence.

Paragraph (d) would be revised to clarify the basis for Federal certification actions in relation to Federal findings during the review process. The wording of current paragraph (e) would be the same as the sanctions specified in paragraph (f). Current paragraph (g) would be eliminated to reflect changes made by the TEA-21 (related to the failure to remain certified for two years after October 1994). A new proposed § 1410.334(g) would focus on the new statutory requirement for public involvement during a certification review. We previously required this through administrative directive. Hence, there would be no change in practice, other than to further encourage broad public outreach as part of certification reviews.

#### *Phase-in of New Requirements*

No phase-in period for any requirements under the TEA-21 is proposed. Current § 450.336 would be

removed. Comments on the desirability of such requirements and the specific areas for which they are warranted are welcome.

#### *Rulemaking Analyses and Notices*

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, we will continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

#### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies*

We have determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866 and under Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. This rulemaking is a revision to an existing regulation for which the costs of compliance have previously been addressed. The modifications proposed herein are intended to reduce current regulatory requirements (e.g., simplification of planning factors, elimination of separate MIS requirement, simplification of planning area boundary establishment, etc.) and to add some additional data analysis requirements (e.g., elaboration of environmental justice data analyses, preparation of an Intelligent Transportation Systems Integration Strategy, addition of operations and management responsibility, etc.). In preparing this proposal, the agencies have sought to maintain existing flexibility of operation wherever possible for States, MPOs, and other affected organizations and utilize already existing processes to accomplish any new tasks or activities. As a result, we believe that the economic impact of this rulemaking in comparison to the existing regulation should be the same or less.

The marginal additional costs associated with these proposed rules are attributable to the streamlining

provisions of the TEA-21. Achieving the goals of these provisions more efficiently and effectively warrants the regulatory changes proposed herein. Furthermore, we provide substantial financial assistance to States and MPOs to support compliance with the regulatory requirements of this part. Funding for the planning process increased substantially under the TEA-21 and should, we believe, off-set much of the economic impact on entities complying with these requirements.

This proposed rule would revise existing metropolitan planning regulations of the FHWA and the FTA and conform those regulations to requirements of the TEA-21. While they incorporate some new requirements, the bulk of them have been in place for many years and States and metropolitan planning organizations have been implementing them. In the past, we have provided funding to support planning activities and production of required transportation documents, e.g., transportation plans and improvement programs. During Fiscal Year 1999, the FHWA will provide in excess of \$187 million for metropolitan planning and \$492 million for State planning and research activities. The FTA provided \$42 million for metropolitan planning. For both agencies, there is a statutory matching grant requirement which stipulates that recipients must match Federal funds at least on an 80 percent Federal, 20 percent recipient basis. To meet the State planning funds matching requirement, States will expend approximately \$98 million. The MPOs will have to provide approximately \$46 million of non-Federal funds to match the Federal metropolitan planning funds (the FHWA and the FTA funds combined). If the States and other recipient's choose not to accept Federal support for transportation they would not have to develop the plans and programs stipulated in this proposed rule. Hence, the Federal government provides a substantial economic incentive to encourage State and metropolitan planning. In addition, these rules support the EPA conformity regulation at 40 CFR parts 53 and 91 which establishes requirements for MPOs to perform regional transportation and emissions modeling and to document the regional air quality impacts of transportation improvements contained in plans and programs.

The impacts on the States and MPOs result mainly from modified data collection and analysis activities that may be necessary to implement the TEA-21 planning provisions. A single new provision in § 1410.322(b)(11) focuses on the requirements for

satisfying section 5206(e) of the TEA-21 regarding demonstrating consistency of Intelligent Transportation Systems projects funded with highway trust fund dollars with the provisions of the National ITS Architecture. The economic impacts of this provision are addressed in the regulatory analysis being prepared for the specific rulemaking on ITS architecture consistency. We anticipate that the elements required in the planning process for ITS consistency would generally be undertaken anyway as a part of the plan development activities and do not require significant new processes or requirements of MPOs and States.

In general, we believe that the rule changes proposed here have added limited regulatory requirements. The impact of complying with the changes can be minimized by States and MPOs by using the flexibility provided in the proposed rule to reduce data collection and analysis costs. While there may be additional costs to some States and MPOs, the TEA-21 significantly increased the mandatory set-aside in Federal funds that must be used for transportation planning, and in addition, gives the States and MPOs the flexibility to use Federal capital dollars for transportation planning if they so desire. We are interested in the costs to States and MPOs of complying with the proposed requirements, including the expenditure of State and MPO funds above the required matching amounts. Comments on this matter are welcome.

The agencies welcome comment on the economic impacts of these proposed regulations. Comments, including those from the States and MPOs, regarding specific burdens, impacts, and costs would be most welcome and would aid us in more fully appreciating the impacts of this ongoing planning process requirement. Hence, we encourage comments on all facets of this proposal regarding its costs, burden, and impact.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Public Law 96-354; 5 U.S.C. 601-612), we have evaluated the effects of these rules on small entities, such as, local governments and businesses. The proposed metropolitan and statewide planning regulations modify existing planning requirements. These modifications are substantially dictated by the statutory provisions of the TEA-21. We believe that the flexibility available to States and MPOs in responding to requirements has been maintained, if not enhanced, in this proposal. Accordingly, the FHWA and

the FTA certify that this action would not have a significant economic impact on a substantial number of small entities.

We are interested in any comments regarding the potential economic impacts of these proposed rules on small entities and governments. Of specific concern are the additional costs of the incremental changes in our regulatory requirements. The agencies believe that these costs have been off-set largely by reduced statutory requirements and the flexibility built into the regulations. The agencies are requesting comments on these issues.

#### **Executive Order 13132 (Federalism Assessment)**

This proposed action has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient Federalism implications on States and local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The TEA-21 and its predecessors authorize the Secretary to implement the provisions for metropolitan and statewide planning. We believe that policies in these proposed rules are consistent with the principles, criteria and requirements of the Federalism Executive Order and the TEA-21. Comments on these conclusions are welcomed and should be submitted to the docket.

#### **Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway planning and Construction (or 20.217); 20.500, Federal Transit Capital Improvement Grants; 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. We have determined that this proposal contains a requirement for minor additional data



collection to satisfy the provisions of the TEA-21 associated with ITS and environmental justice. The FHWA and the FTA believe that this burden increase has been off-set by decreases in requirements associated with the seven planning factors and related matters.

The reporting requirements for metropolitan UPWPs, transportation plans and transportation improvement programs are currently approved under OMB control number 2132-0529. An extension request was filed with OMB on January 28, 2000, and a Notice of Request for Extension was published in the *Federal Register* on April 7, 2000 (65 FR 18421). The analysis supporting this approval was conducted by the FTA on behalf of both the FTA and the FHWA since the regulations are jointly issued by both agencies. The reporting requirements for statewide transportation plans and programs are also approved under this same OMB control number. The information collection requirements addressed under the current OMB approval number (2132-0529) impose a total burden of 241,850 hours on the planning agencies that must comply with the requirements in the existing regulation. We initiated the preparation of materials to obtain a new three year approval from OMB in January 2000. The request for a new data collection approval will be filed with OMB before publication of this NPRM. The FHWA and the FTA are soliciting comments on this NPRM regarding the extent to which any additional burden, beyond that associated with the current collection requirement, will be incurred by States and MPOs.

The creation and submission of required reports and documents have been constrained to those specifically required by the TEA-21 or essential to the performance of our findings, certifications and/or approvals. The State plans are prepared on cycles individually determined by the States; the average is 10 such submissions per year. The State TIPs are prepared every two years. Approximately one third of all metropolitan areas prepare new plans every three years. The remaining metropolitan plans are updated every five years. We have assumed a distribution over several years for the plans. We have assumed that half of all TIPs are submitted annually. We assume an annual submission of unified planning work programs. By distributing the added burden for preparing these various submissions, the net result would be a minimal burden increase for each type of submission.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA and the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to the NPRM will be summarized and/or included in the request for OMB's clearance of this information collection.

#### **National Environmental Policy Act**

We have analyzed these proposed actions for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). It is our determination this action is consistent with the provisions of 23 CFR 771.117(c)(20) which deems the issuance of regulations of this nature to meet the requirements for a Categorical Exclusion.

#### **Unfunded Mandates Reform Act of 1995**

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year. (2 U.S.C. 1531 *et seq.*)

The requirements of 23 U.S.C. 134 and 135 are supported by Federal funds administered by the FHWA and the FTA. There is a legislatively established local matching requirement for these funds of twenty percent of the total project cost. The FHWA and the FTA believe that the costs of complying with these requirements is predominantly covered by the funds they administer. However, as has been the case with previous regulatory issuances, we welcome comments from States, MPOs, transit agencies and other organizations regarding the extent to which the cost of compliance is covered by the funds provided.

#### **Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

This rule will not effect a taking of private property or otherwise have taking implications under Executive order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of every year. The RINs contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### **List of Subjects**

23 CFR Parts 450 and 1410

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 613

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 621

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

#### **Federal Highway Administration**

##### **23 CFR Chapter I**

For reasons set forth in the preamble, and under the authority of 23 U.S.C. 134, 135, and 315, the FHWA proposes to amend Chapter I of title 23, Code of Federal Regulations, as follows:

#### **PART 450—[REMOVED]**

1. Remove part 450.

##### **23 CFR Chapter IV**

2. For reasons set forth in the preamble, the Federal Highway Administration and the Federal Transit Administration propose to establish a new chapter IV in title 23, Code of Federal Regulations, consisting of part 1410 as set forth below:

**CHAPTER IV—FEDERAL HIGHWAY  
ADMINISTRATION AND FEDERAL TRANSIT  
ADMINISTRATION, DEPARTMENT OF  
TRANSPORTATION**

**PART 1410—METROPOLITAN AND  
STATEWIDE PLANNING**

**Subpart A—Definitions**

Sec.

- 1410.100 Purpose.
- 1410.102 Applicability.
- 1410.104 Definitions.

**Subpart B—Statewide Transportation  
Planning and Programming**

- 1410.200 Purpose.
- 1410.202 Applicability.
- 1410.204 Definitions.
- 1410.206 Statewide transportation planning process basic requirements.
- 1410.208 Consideration of statewide transportation planning factors.
- 1410.210 Coordination of planning process activities.
- 1410.212 Participation by interested parties.
- 1410.214 Content and development of statewide transportation plan.
- 1410.216 Content and development of statewide transportation improvement program.
- 1410.218 Relation of planning and project development processes.
- 1410.220 Funding of planning process.
- 1410.222 Approvals, self-certification and findings.
- 1410.224 Project selection.
- 1410.226 Applicability of NEPA to transportation planning and programming.

**Subpart C—Metropolitan Transportation  
Planning and Programming**

- 1410.300 Purpose of planning process.
- 1410.302 Organizations and processes affected by planning requirements.
- 1410.304 Definitions.
- 1410.306 What is a Metropolitan Planning Organization and how is it created?
- 1410.308 Establishing the geographic boundaries for metropolitan transportation planning areas.
- 1410.310 Agreements among organizations involved in the planning process.
- 1410.312 Planning process organizational relationships.
- 1410.314 Planning tasks and unified work program.
- 1410.316 Transportation planning process and plan development.
- 1410.318 Relation of planning and project development processes.
- 1410.320 Congestion management system and planning process.
- 1410.322 Transportation plan content.
- 1410.324 Transportation improvement program content.
- 1410.326 Transportation improvement program modification.
- 1410.328 Metropolitan transportation improvement program relationship to statewide TIP.
- 1410.330 Transportation improvement program action by FHWA/FTA.
- 1410.332 Selecting projects from a TIP.
- 1410.334 Federal certifications.

Authority: 23 U.S.C. 134, 135, 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5305; 49 CFR 1.48 and 1.51.

**Subpart A Definitions**

**§ 1410.100 Purpose.**

The purpose of this subpart is to provide definitions for terms used in this part which go beyond those terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302.

**§ 1410.102 Applicability.**

The definitions in this subpart are applicable to this part, except as otherwise provided.

**§ 1410.104 Definitions.**

Except as defined in this subpart, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this part as so defined.

*Conformity lapse* means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

*Conformity rule* means the EPA Transportation Conformity Rule, as amended, 40 CFR parts 51 and 93.

*Congestion management system* means a systematic process for managing congestion that provides information on transportation system performance and on alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet State and local needs.

*Consultation* means that one party confers with another party, in accordance with an established process, about an anticipated action and then keeps that party informed about actions taken.

*Cooperation* means that the parties involved in carrying out the planning and/or project development processes work together to achieve a common goal or objective.

*Coordination* means the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs and schedules of other agencies and adjustment of plans, programs and schedules to achieve general consistency.

*Design concept* means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

*Design scope* means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be

constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

*Federally funded non-emergency transportation services* means transportation services provided to the general public, including those with special transport needs, by public transit, private non-profit service providers, and private third-party contractors to public agencies.

*Financial estimate* means a projection of Federal and State resources that will serve as a basis for developing plans and/or TIPs.

*Freight shipper* means an entity that utilizes a freight carrier in the movement of its goods.

*Governor* means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

*Illustrative project* means a transportation improvement that would be included in a financially constrained transportation plan and program if reasonable additional financial resources were available to support it.

*Indian Tribal Government* means a duly formed governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

*Interim plan* means a plan composed of projects eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93) and otherwise meeting all other provisions of this part including adoption by the MPOs.

*Interim transportation improvement program* means a TIP composed of projects eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93) and otherwise meeting all other provisions of this part including approval by the Governor.

*ITS integration strategy* means a systematic approach for coordinating and implementing intelligent transportation system investments funded with Federal highway trust funds to achieve an integrated regional system.

*Maintenance area* means any geographic region of the United States previously designated nonattainment pursuant to the Clean Air Act Amendments of 1990 (CAA) and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

**Management and operation** means actions and strategies aimed at improving the person, vehicle and/or freight carrying capacity, safety, efficiency and effectiveness of the existing and future transportation system to enhance mobility and accessibility in the area served.

**Metropolitan planning area** means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303-5306 must be carried out.

**Metropolitan planning organization (MPO)** means the forum for cooperative transportation decision making for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

**Metropolitan transportation plan** means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area, in accordance with 23 U.S.C. 134 and 135 and 49 U.S.C. 5303.

**Nonattainment area** means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

**Non-metropolitan local official** means elected or appointed officials of general purpose local government, outside metropolitan planning areas, with jurisdiction/responsibility for transportation or other community development actions that impact transportation and elected officials for special transportation and planning agencies, such as economic development districts and land use planning agencies.

**Provider of freight transportation services** means a shipper or carrier which transports or otherwise facilitates the movement of goods from one point to another.

**Purpose and need** means the intended outcome and sustaining rationale for a proposed transportation improvement, including, but not limited to, mobility deficiencies for identified populations and geographic areas.

**Regionally significant project** means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a

metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

**State** means any one of the fifty States, the District of Columbia, or Puerto Rico.

**State implementation plan (SIP)** means:

(1) The implementation plan which contains specific strategies for controlling emissions of and reducing ambient levels of pollutants in order to satisfy Clean Air Act (CAA) requirements for demonstrations of reasonable further progress and attainment (CAA secs. 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and secs. 192(a) and 192(b), for nitrogen dioxide of the CAA); or

(2) The implementation plan under section 175A of the CAA as amended.

**Statewide transportation improvement program (STIP)** means a staged, multi-year, statewide, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan plans, TIPs and processes pursuant to 23 U.S.C. 135.

**Statewide transportation improvement program (STIP) extension** means the lengthening of the scheduled duration of an existing STIP, including the component metropolitan TIPs included in the STIP, beyond two years by joint administrative action of the FHWA and the FTA. STIP extensions are not allowed for metropolitan TIP portions of the STIP which are in nonattainment or maintenance areas as well as for those portions of the STIP containing projects in rural nonattainment or maintenance areas.

**Statewide transportation plan** means the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process pursuant to 23 U.S.C. 135.

**TIP update** means the periodic re-examination and revision of TIP contents, including, but not limited to, non-exempt projects, on a scheduled basis, normally at least every two years. The addition or deletion of a non-exempt project or phase of a non-exempt project to a TIP shall be based on a comprehensive update of the TIP.

**Transportation control measure** means any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or

concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs.

**Transportation improvement program (TIP)** means a staged, multi-year, intermodal program of transportation projects in the metropolitan planning area which is consistent with the metropolitan transportation plan.

**Transportation Management Area (TMA)** means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the entire metropolitan planning area(s).

**Transportation plan update** means the periodic review, revision or reaffirmation of plan content, normally every three years in nonattainment and maintenance areas and five years in attainment areas or the update period for State plans as determined by the State.

**Twenty year planning horizon** means a forecast period covering twenty years from the date of plan adoption, reaffirmation or modification in attainment areas and subsequent Federal conformity finding at the time of adoption in nonattainment and maintenance areas. The plan must reflect the most recent planning assumptions for current and future population, travel, land use, congestion, employment, economic activity and other related statistical measures for the metropolitan planning area.

**Urbanized area (UZA)** means a geographic area with a population of at least 50,000 as designated by the U.S. Department of Commerce, Bureau of the Census based on the latest decennial census or special census as appropriate.

**User of public transit** means any person or group representing such persons who use mass transportation open to the public other than taxis and other privately operated vehicles.

## Subpart B—Statewide Transportation Planning and Programming

### § 1410.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 135, which requires each State to carry out a transportation planning process that shall be continuing, cooperative, and



comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed. The transportation planning process shall be intermodal and shall develop a statewide transportation plan and transportation improvement program for all areas of the State, including those areas subject to the requirements of 23 U.S.C. 134 and 49 U.S.C. 5303-5305. The plan and program shall facilitate the development and integrated management and operation of safe transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States. The intermodal transportation system shall provide for safe, efficient, economic movement of people and goods in all areas of the State and foster economic growth and development while minimizing transportation-related fuel consumption and air pollution.

#### § 1410.202 Applicability.

The provisions of this subpart are applicable to States and any other agencies/organizations, such as MPOs, transit operators and air quality agencies, that are responsible for satisfying these requirements for transportation planning, programming and project development throughout the State pursuant to 23 U.S.C. 135.

#### § 1410.204 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

#### § 1410.206 Statewide transportation planning process basic requirements.

(a) The statewide transportation planning process shall include, as a minimum, the following:

- (1) Data collection and analysis;
- (2) Consideration of factors contained in § 1410.208;
- (3) Coordination of activities as noted in § 1410.210;
- (4) Development of a statewide transportation plan for all areas of the State that considers a range of transportation options designed to meet the transportation needs (e.g., passenger, freight, safety, etc.) of the State including all modes and their connections;
- (5) Development of a statewide transportation improvement program (STIP) for all areas of the State; and
- (6) Various processes to accomplish data collection and analyses essential

for an effective transportation planning process, including a process to assure that, no person shall, on the grounds of race, color, sex, national origin, age, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal assistance from the U.S. Department of Transportation. These assurances shall be demonstrated through the following:

- (i) An assessment covering the State, including at a minimum the following:
    - (A) A geographic and demographic profile of the State that identifies the low-income and minority, and where appropriate, elderly and persons with disabilities, components of this profile;
    - (B) The transportation services available to or planned for these segments of the State population;
    - (C) Any disproportionately high and adverse environmental effects, including interrelated social and economic effects, consistent with the provisions of Executive Order 12898 (59 FR 7629, 3 CFR, 1995 comp., p. 859) as implemented through US DOT Order 5610.2 and FHWA Order 6640.23;<sup>1</sup> and
    - (D) Any denial of or a reduction in benefits;
  - (ii) Consideration of comments received during public involvement efforts (consistent with the provisions of § 1410.212(b)) to ensure that expressed concerns of the elderly, minority individuals and persons with disabilities, have been addressed during plan and program decision making;
  - (iii) Identification of prior and planned efforts to address any disproportionately high and adverse effects that are found;
  - (iv) The results of paragraphs (a)(5)(i), (ii) and (iii) of this section will be documented in a manner to permit public review during appropriate project development activities;
  - (v) The State may rely on information provided by a metropolitan planning organization for those segments of the population in metropolitan planning areas of the State; and
  - (vi) In accordance with Executive Order 12898, DOT Order 5610.2, and FHWA Order 6640.23, nothing in paragraphs (a)(5)(i) through (vi) of this section are intended to nor shall they create any right to judicial review of any action taken by the agency, its officers or its recipients taken under this part to comply with such Orders.
- (b) [Reserved].

<sup>1</sup> DOT order 5610.2 and FHWA order 6640.23 are available for inspection and copying from DOT headquarters and field offices as prescribed at 49 CFR part 7.

#### § 1410.208 Consideration of statewide transportation planning factors.

(a) Each statewide transportation planning process shall provide for consideration of projects and strategies that will:

- (1) Support the economic vitality of the United States, the States, and metropolitan areas, especially by enabling global competitiveness, productivity and efficiency;
- (2) Increase the safety and security of the transportation system for motorized and nonmotorized users;
- (3) Increase the accessibility and mobility options available to people and for freight;
- (4) Protect and enhance the environment, promote energy conservation, and improve quality of life;
- (5) Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;
- (6) Promote efficient system management and operation; and
- (7) Emphasize the preservation of the existing transportation system.

(b) In addition, in carrying out statewide transportation planning, the State shall consider, at a minimum, the following and other factors and issues that the planning process participants might identify which are important considerations within the statewide transportation planning process:

- (1) With respect to nonmetropolitan areas, the concerns of local elected officials representing units of general purpose local government; and
- (2) The concerns of Indian Tribal Governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State.

#### § 1410.210 Coordination of planning process activities.

(a) The statewide transportation planning process shall be carried out in coordination with adjacent States, adjacent countries as appropriate at the international borders, and with the metropolitan planning process required by subpart C of this part.

(b) The statewide transportation planning process shall be coordinated with air quality planning and provide for appropriate conformity analyses to the extent required by the Clean Air Act (40 U.S.C. 175 and 176). The State shall carry out its responsibilities for the development of the transportation portion of the State Implementation Plan to the extent required by the Clean Air Act (42 U.S.C. 7504), as appropriate within the statewide transportation planning process.

(c) Development of transportation plans, programs and planning activities shall be coordinated with related planning activities being carried out outside of metropolitan planning areas.

(d) The statewide transportation planning process shall provide a forum for coordinating data collection and analyses to support, planning, programming and project development decisions.

(e) The degree of coordination shall be based on the scale and complexity of many issues including transportation problems, safety concerns, land use, employment, economic, environmental, and housing and community development objectives, and other circumstances statewide or in subareas within the State.

**§ 1410.212 Participation by interested parties.**

(a) Non-metropolitan local official participation.

(1) The State shall have a documented process for consultation with local officials in non-metropolitan areas within the continuing, cooperative and comprehensive planning process for development of the statewide transportation plan and the statewide transportation improvement program. The process shall be documented and cooperatively developed by both the State and nonmetropolitan local officials.

(2) The process for participation of nonmetropolitan local officials shall not be reviewed or approved by the FHWA and the FTA. However, local official participation will be among the issues considered by the FHWA and the FTA in making the transportation planning finding called for in § 1410.222(b).

(b) Public involvement.

(1) Public involvement processes shall be open and proactive by providing complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement.

(2) To satisfy these objectives public involvement processes shall provide for:

(i) Early and continuing public involvement opportunities throughout the transportation planning and programming process; and

(ii) Timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, freight shippers, providers of freight transportation services, representatives of users of public transit, and other interested parties and segments of the community

affected by transportation plans, programs, and projects;

(iii) Reasonable public access to technical and policy information used in the development of the plan and STIP;

(iv) Adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited, to action on the plan and STIP;

(v) A process for demonstrating explicit consideration and response to public input during the planning and program development process, including responses to input received from persons with disabilities and minority, elderly, and low-income populations;

(vi) A process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, including, but not limited to, low-income and minority populations which may face challenges accessing employment and other amenities;

(vii) Periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all and revision of the process as necessary, with specific attention to the effectiveness of efforts to engage persons with disabilities, minority individuals, the elderly and low-income populations.

(3) Public involvement activities carried out in a metropolitan area in response to metropolitan planning requirements in § 1410.322(c) or § 1410.324(c) may by agreement of the State and the MPO satisfy the requirements of this section.

(4) During initial development and major revisions of the statewide transportation plan required under § 1410.214, the State shall provide citizens, affected public agencies and jurisdictions, representatives of transportation agency employees, private and public providers of transportation, representatives of users of public transit, freight shippers, providers of freight transportation services and other interested parties a reasonable opportunity to comment on the proposed plan. The proposed plan shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. Likewise, the official statewide transportation plan (see § 1410.214(d)) shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(5) During development and major revision of the statewide transportation

improvement program required under § 1410.216, the Governor shall provide citizens, affected public agencies and jurisdictions, representatives of transportation agency employees, private and public providers of transportation, representatives of users of public transit, freight shippers, providers of freight transportation services and other interested parties, a reasonable opportunity for review and comment on the proposed program. The proposed program shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. The approved program (see § 1410.222(b)) if it differs significantly from the proposed program, shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(6) The time provided for public review and comment for minor revisions to the statewide transportation plan or statewide transportation improvement program shall be determined by the State and local officials based on the complexity of the revisions.

(7) The State shall, as appropriate, provide for public comment on existing and proposed procedures for public involvement throughout the statewide transportation planning and programming process. As a minimum, the State shall publish procedures and allow 45 days for public review and written comment before the procedures and any major revisions to existing procedures are adopted.

(c) Federal agency and other government participation. The transportation planning process shall allow for participation of other governments and agencies, particularly Indian Tribal Governments and Federal lands managing agencies. The process for consulting with Indian Tribal Governments and Federal lands managing agencies shall be cooperatively developed and documented by both the State and the Indian Tribal Government(s) or the respective Federal lands managing agency.

(d) State air quality agency and other state agency participation. The transportation planning process shall allow for participation of the State air quality agency and other state agencies as determined appropriate by the planning process participants.

(e) Participation and the planning finding. The processes for participation of interested parties will be considered by the FHWA and the FTA as they make the planning finding required in § 1410.222(b) to assure that full and

open access is provided to the decision making process.

**§ 1410.214 Content and development of statewide transportation plan.**

(a) The State shall develop a statewide transportation plan that shall:

(1) Cover all areas of the State;

(2) Be intermodal (including consideration and provision, as applicable, of elements and connections of and between transit, non-motorized, rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel) and statewide in scope in order to facilitate the safe and efficient movement of people and goods;

(3) Address the development of intelligent transportation systems (ITS) investment strategies, including an ITS Integration Strategy consistent with the provisions of § 1410.322(b)(11), to support the development of integrated technology based investments, including metropolitan and non-metropolitan investments. The scope of the integration strategy shall be appropriate to the scale of investment anticipated for ITS during the life of the plan and shall address the level of resources and staging of planned investments. ITS Integration Strategy shall be developed and documented no later than the first update of the transportation plan or STIP that occurs two years following the effective date of the final rule;

(4) Be reasonably consistent in time horizon among its elements, but cover a forecast period of at least 20 years;

(5) Provide for development and integrated management and operation of bicycle and pedestrian transportation system and facilities which are appropriately interconnected with other modes;

(6) Be coordinated with the metropolitan transportation plans required under 23 U.S.C. 134 and 49 U.S.C. 5303;

(7) Reference, summarize or contain any applicable short range planning studies, strategic planning and/or policy studies, transportation needs studies, management system reports and any statements of policies, goals and objectives regarding issues, such as, transportation, economic development, housing, social and environmental effects, energy, etc., that were significant to development of the plan;

(8) Reference, summarize or contain information on the availability of financial (including as appropriate an optional financial plan consistent with 23 CFR 1410.214(d)) and other resources needed to carry out the plan; and

(9) Contain strategies that ensure timely compliance with the applicable SIP.

(b) The following entities shall be involved in the development of the statewide transportation plan:

(1) MPOs shall be involved on a cooperation basis for the portions of the plan affecting metropolitan planning areas;

(2) Indian Tribal Governments and the Secretary of the Interior shall be involved on a consultation basis for the portions of the plan affecting areas of the State under the jurisdiction of an Indian Tribal Government;

(3) Federal lands managing agencies shall be involved on a consultation basis for the portions of the program affecting areas of the State under their jurisdiction;

(4) Affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the plan in nonmetropolitan areas of the State.

(c) In developing the statewide transportation plan, the State shall:

(1) Provide for participation by interested parties as required under § 1410.212;

(2) Provide for consideration and analysis as appropriate of specified factors as required under § 1410.208;

(3) Provide for coordination as required under § 1410.210; and

(4) Identify transportation strategies necessary to efficiently serve the mobility needs of people.

(d) The statewide transportation plan may include a financial plan that:

(1) Demonstrates how the adopted transportation plan can be implemented;

(2) Indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

(3) Recommends any additional financing strategies for needed projects and programs;

(4) Might include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the Secretary of Transportation on the STIP.

(e) The State shall provide and carry out a mechanism to adopt the plan as the official statewide transportation plan.

(f) The plan shall be continually evaluated and periodically updated, as

appropriate, using the procedures in this section for development and establishment of the plan.

**§ 1410.216 Content and development of statewide transportation improvement program (STIP).**

(a) Each State shall develop a statewide transportation improvement program for all areas of the State. In case of difficulties in developing the STIP portion for a particular area, e.g., metropolitan area, Indian Tribal lands, etc., a partial STIP covering the rest of the State may be developed. The portion of the STIP in a metropolitan planning area (the metropolitan TIP developed pursuant to subpart C of this part) shall be developed in cooperation with the MPO. To assist metropolitan TIP development the State, the MPO and the transit operator will cooperatively develop timely estimates of available Federal and State funds which are to be utilized in developing the metropolitan TIP. Metropolitan planning area TIPs shall be included without modification in the STIP, directly or by reference, once approved by the MPO and the Governor and after needed conformity findings are made. Metropolitan TIPs in nonattainment and maintenance areas are subject to the FHWA and the FTA conformity findings before their inclusion in the STIP. In nonattainment and maintenance areas outside metropolitan planning areas, Federal findings of conformity must be made prior to placing projects in the STIP. The State shall notify the appropriate MPO, local jurisdictions, Federal land management agency, Indian Tribal Government, etc., when a TIP including projects under the jurisdiction of the agency has been included in the STIP. All title 23 U.S.C. and 49 U.S.C. Chapter 53 fund recipients will share information as projects in the STIP are implemented. The Governor shall provide for participation of interested parties in development of the STIP as required by § 1410.212.

(b) The following entities shall be involved in the development of the statewide transportation improvement program:

(1) MPOs shall be involved on a cooperation basis for the portions of the program affecting metropolitan planning areas;

(2) Indian Tribal Governments and the Secretary of the Interior shall be involved on a consultation basis for the portions of the program affecting areas of the State under the jurisdiction of an Indian Tribal Government;

(3) Federal lands managing agencies shall be involved on a consultation basis for the portions of the program affecting

areas of the State under their jurisdiction; and

(4) Affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the program in nonmetropolitan areas of the State.

(c) The STIP shall:

(1) Include a list of priority transportation projects proposed to be carried out in the first three years of the STIP. Since each TIP is approved by the Governor, the TIP priorities will dictate STIP priorities for each individual metropolitan area. As a minimum, the lists shall group the projects that are to be undertaken in each of the years, *e.g.*, year 1, year 2, year 3;

(2) Cover a period of not less than three years, but may at State discretion cover a longer period. If the STIP covers more than three years, the projects in the additional years will be considered by the FHWA and the FTA only as informational;

(3) Contain only projects consistent with the statewide plan developed under § 1410.214;

(4) In nonattainment and maintenance areas, contain only transportation projects that have been found to conform, or which come from programs that conform, in accordance with the requirements contained in the EPA conformity regulation 40 CFR parts 51 and 93;

(5) Contain a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. The STIP financial constraint will be demonstrated and maintained by year and the STIP shall include sufficient financial information to demonstrate which projects are to be implemented using current revenues and which projects are to be implemented using proposed revenue sources while the system as a whole is being adequately operated and maintained. In nonattainment and maintenance areas, projects included in the first two years of the current STIP/TIP shall be limited to those for which funds are available or committed. In the case of proposed funding sources, strategies for ensuring their availability shall be identified, preferably in an optional financial plan consistent with § 1410.216(f);

(6) Contain all capital and non-capital transportation projects (including transportation enhancements, safety, Federal lands highways projects, trails projects, pedestrian walkways, and bicycle transportation facilities), or identified phases of transportation projects, proposed for funding under 49

U.S.C. Chapter 53 and/or title 23, U.S.C., excluding:

(i) Metropolitan planning projects funded under 23 U.S.C. 104(f) and 49 U.S.C. 5303;

(ii) State planning and research projects funded under 23 U.S.C. 307(c)(1) and 49 U.S.C. 5313(b) (except those funded with national highway system (NHS), surface transportation program (STP) and minimum guarantee funds that the State and MPO for a metropolitan area agree should be in the TIP and consequently must be in the STIP); and

(iii) Emergency relief projects (except those involving substantial functional, locational or capacity changes);

(7) Contain all regionally significant transportation projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with title 23, U.S.C., or 49 U.S.C. Chapter 53 funds, and/or selected funds administered by the Federal Railroad Administration, *e.g.*, addition of an interchange to the Interstate System with State, local and/or private funds, high priority or demonstration projects not funded under title 23, U.S.C., or 49 U.S.C. Chapter 53. (The STIP should include all regionally significant transportation projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA. It should also include, for information purposes, if appropriate and cited in any TIPs, all regionally significant projects, to be funded with non-Federal funds);

(8) Identify ITS projects funded with highway trust fund monies, including as appropriate an integration strategy, consistent with the statewide plan. Where ITS projects are identified that fit the provisions of § 1410.322(b)(11), an agreement shall exist between participating agencies in the project area that will govern their implementation.

(9) Include for each project or phase the following:

(i) Sufficient descriptive material (*i.e.*, type of work, termini, length, etc.) to identify the project or phase;

(ii) Estimated total project cost, which may extend beyond the three years of the STIP;

(iii) The amount of funds proposed to be obligated during each program year for the project or phase;

(iv) For the first year, the proposed category of Federal funds and source(s) of non-Federal funds for the project or phase;

(v) For the second and third years, the likely category of Federal funds and sources of non-Federal funds for the project or phase;

(vi) Identification of the agencies responsible for carrying out the project or phase; and

(10) For non-metropolitan areas, include in the first year only those projects which have been selected in accordance with the requirements in § 1410.224(c).

(d) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 1420.311(c) and (d) and/or 40 CFR part 93. In addition, projects funded under chapter 2 of 23 U.S.C. may be grouped by funding category and shown as one line item, unless they are determined to be regionally significant.

(e) Projects in any of the first three years of the STIP may be moved to any other of the first three years of the STIP subject to the requirements of § 1410.224.

(f) The statewide transportation improvement program may include a financial plan that:

(1) Demonstrates how the adopted transportation improvement program can be implemented;

(2) Indicates resources from public and private sources that are reasonably expected to be made available to carry out the program;

(3) Recommends any additional financing strategies for needed projects and programs;

(4) Might include, for illustrative purposes, additional projects that would be included in the transportation improvement program if reasonable additional resources beyond those identified in the financial plan were available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the Secretary on the STIP.

(g) The STIP may be modified at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this section (for STIP development), in § 1410.212 (for interested party participation) and in § 1410.222 (for the FHWA and the FTA approval).

#### **§ 1410.218 Relation of planning and project development processes.**

(a) Depending upon its character and the level of detail desired as determined by the planning process participants, the statewide planning process products and analyses can be utilized as input to subsequent project development. The process described in § 1410.318 relating planning and project development may

be utilized at the discretion of the statewide transportation planning process participants in non-metropolitan areas. Analyses performed within the statewide planning process to support project development lead to a statement of purpose and need for regionally significant proposed transportation investments.

(b) The results of analyses conducted under paragraph (a) of this section, at the option of the planning participants, may:

(1) Be documented as part of the plan development record for consideration in subsequent project development actions;

(2) Serve as input to the NEPA process required under 23 CFR 1420;

(3) Provide a basis, in part, for project level decision making; and

(4) Be proposed for consideration as support for actions and decisions by federal agencies other than US DOT;

(c) To the extent feasible, Federal, State, and local agencies with subsequent project level responsibilities for investments included in a transportation plan, shall be involved in planning analyses and studies as a means to reduce subsequent project development analyses and studies, support decisionmaking, and provide early identification of key concerns for later consideration and analysis as needed. Where the processes available under § 1410.318(f) are invoked, the FHWA and the FTA shall be consulted.

(d) Nothing in this section shall be interpreted as requiring formal NEPA review of or action on plans and TIPs.

(e) The FHWA and the FTA project level actions, including, but not limited to issuance of a categorical exclusion, finding of no significant impact or a final environmental impact statement under 23 CFR 1420, right of way acquisition (with the exception of hardship and protective buying actions), interstate interchange approvals, high occupancy vehicle (HOV) conversions, funding of ITS projects, project conformity analyses and approval of final design and construction and transit vehicle acquisition may not be completed unless the proposed project action is included in a STIP which meets the requirements of this subpart. None of these project level actions can occur in nonattainment and maintenance areas unless the project conforms according to the requirements of the EPA's conformity rule (40 CFR parts 51 and 93).

#### § 1410.220 Funding of planning process.

Funds provided under 49 U.S.C. 5303, 5307, 5309, 5311, and 5313(b) and 23 U.S.C. 104(b)(1), 104(b)(3), 104(f), 105,

and 505(a) may be used to accomplish activities in this subpart.

#### § 1410.222 Approvals, self-certification and findings.

(a) At least every two years, each State shall submit the entire proposed STIP, and amendments as necessary, concurrently to the FHWA and the FTA for joint approval. The State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

(1) 23 U.S.C. 134 and 135, 49 U.S.C. 5303–5305 and 5323(k), and this part;

(2) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and implementing regulations (49 CFR part 21 and 23 CFR part 230);

(3) Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324);

(4) The Older Americans Act of 1965, as amended (42 U.S.C. 6101); and

(5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations (49 CFR part 35);

(6) Section 1101 of the Transportation Equity Act for the 21st Century (Public Law 105–178) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded projects (sec. 105(f), Public Law 97–424, 96 Stat. 2100; 49 CFR part 23);

(7) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(8) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities;

(9) In States containing nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act as amended (42 U.S.C. 7504, 7506 (c) and (d)); and

(10) All other applicable provisions of Federal law.

(b) The FHWA and the FTA Administrators, in consultation with, where applicable, Federal land managing agencies, will review the STIP or amendment and jointly make a finding (based on self-certifications made by the State and appropriate reviews established and conducted by FTA and FHWA) as to the extent the projects in the STIP are based on a planning process that meets or substantially meets the requirements of title 23, U.S.C., 49 U.S.C. Chapter 53 and subparts A, B, and C of this part.

(1) If, upon review, the FHWA and the FTA Administrators jointly find that the planning process through which the STIP was developed meets the requirements of 23 U.S.C. 135 and these

regulations (including subpart C where a metropolitan TIP is involved), they will unconditionally approve the STIP.

(2) If the FHWA and the FTA administrators jointly find that the planning process through which the STIP was developed substantially meets the requirements of 23 U.S.C. 135 and these regulations (including subpart C where a metropolitan TIP is involved), they will act on the STIP or amendment as follows:

(i) Joint conditional approval of the STIP subject to certain corrective actions being taken;

(ii) Joint conditional approval of the STIP as the basis for approval of identified categories of projects; and/or

(iii) Under special circumstances, joint conditional approval of a partial STIP covering only a portion of the State.

(3) If, upon review, the FHWA and the FTA Administrators jointly find that the STIP or amendment does not substantially meet the requirements of 23 U.S.C. 135 and this part for any identified categories of projects, they will not approve the STIP or amendment.

(c) The joint approval period for a new STIP or amended STIP shall not exceed two years. Where the State demonstrates, in writing, that extenuating circumstances will delay the submittal of a new STIP or amended STIP for approval, the FHWA and the FTA will consider and take appropriate action on requests to extend the approval beyond two years for all or part of the STIP for a limited period of time, not to exceed 180 days. Where the request involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request and if the delay was due to the development and approval of the TIP, the affected MPO(s) must provide supporting information, in writing, for the request. If nonattainment and/or maintenance areas are involved, a request for an extension cannot be granted.

(d) The FHWA and the FTA will notify the State of actions taken under this section.

(e) Where necessary in order to maintain or establish operations, the Federal Transit Administrator and/or the Federal Highway Administrator may approve operating assistance for specific projects or programs funded under 49 U.S.C. 5307 and 5311 even though the projects or programs may not be included in an approved STIP.

#### § 1410.224 Project selection.

(a) Except as provided in §§ 1410.222(e) and 1410.216(c)(6), only

projects included in the federally approved STIP shall be eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects requiring 23 U.S.C. or 49 U.S.C. Chapter 53 funds administered by the FHWA or the FTA shall be selected from the approved TIP/STIP in accordance with procedures established pursuant to the project selection portion of the metropolitan planning regulation in subpart C of this part.

(c) Outside metropolitan planning areas, transportation projects undertaken on the National Highway System with title 23 funds and under the bridge and Interstate maintenance programs shall be selected from the approved STIP by the State in consultation with the affected local officials. Federal lands highway projects shall be selected from the approved STIP in accordance with 23 U.S.C. 204. Other transportation projects undertaken with funds administered by the FHWA shall be selected from the approved STIP by the State in cooperation with the affected local officials, and projects undertaken with 49 U.S.C. Chapter 53 funds shall be selected from the approved STIP by the State in cooperation with the appropriate affected local officials and transit operators.

(d) The projects in the first year of an approved STIP shall constitute an "agreed to" list of projects for subsequent scheduling and implementation. No further action under paragraphs (b) or (c) of this section is required for the implementing agency to proceed with these projects except that if appropriated Federal funds available are significantly less than the authorized amounts, § 1410.332(c) provides for a revised list of "agreed to" projects to be developed upon the request of the State, the MPO, or transit operators. If an implementing agency wishes to proceed with a project in the second and third year of the STIP, the procedures in paragraphs (b) and (c) of this section or as agreed to by the parties under paragraph (e) of this section must be used.

(e) Expedited procedures which provide for the advancement of projects from the second or third years of the STIP may be used if agreed to by all the parties involved in the selection process.

**§ 1410.226 Applicability of NEPA to transportation planning and programming.**

Any decision by the Secretary concerning a transportation plan or transportation improvement program

developed through the processes provided for in 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 through 5305, shall not be considered to be a Federal action subject to review under NEPA.

**Subpart C—Metropolitan Transportation Planning and Programming**

**§ 1410.300 Purpose of planning process.**

The purpose of this subpart is to implement 23 U.S.C. 134 and 49 U.S.C. 5303–5306 which require that a Metropolitan Planning Organization (MPO) be designated for each urbanized area (UZA) and that the metropolitan area have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and support metropolitan community development and social goals. The transportation plan and program shall facilitate the development, management and operation of an integrated, intermodal transportation system that enables the safe, efficient, economic movement of people and goods.

**§ 1410.302 Organizations and processes affected by planning requirements.**

The provisions of this subpart are applicable to agencies responsible for satisfying the requirements of the transportation planning, programming, and project development processes in metropolitan planning areas pursuant to 23 U.S.C. 134.

**§ 1410.304 Definitions.**

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this part as so defined.

**§ 1410.306 What is a Metropolitan Planning Organization and how is it created?**

(a) Designations of metropolitan planning organizations (MPOs) made after December 18, 1991, shall be by agreement among the Governor(s) and units of general purpose local governments representing 75 percent of the affected metropolitan population (including the central city or cities as defined by the Bureau of the Census), or in accordance with procedures established by applicable State or local law. A single metropolitan planning organization, to the extent possible, shall be designated to serve a metropolitan planning area containing:

- (1) A single UZA, or
- (2) Multiple UZAs that are contiguous with each other or located within the same Metropolitan Statistical Area (MSA).

(b) The designation or redesignation shall clearly identify the policy body that is the forum for cooperative decision making that will be taking the required approval actions as the MPO.

(c) To the extent possible, the MPO designated should be established under specific State legislation, State enabling legislation, or by interstate compact, and shall have authority to carry out metropolitan transportation planning.

(d) Nothing in this subpart shall be deemed to prohibit an MPO from utilizing the staff resources of other agencies to carry out selected elements of the planning process.

(e) Existing MPO designations remain valid until a new MPO is redesignated. Redesignation is accomplished by the Governor and local units of government representing 75 percent of the population in the area served by the existing MPO (the central city(ies) must be among those desiring to revoke the MPO designation). If the Governor and local officials decide to redesignate an existing MPO, but do not formally revoke the existing MPO designation, the existing MPO designation remains in effect until a new MPO is formally designated.

(f) Redesignation of an MPO in a multistate metropolitan area requires the approval of the Governor of each State and local officials representing 75 percent of the population in the entire metropolitan planning area. The local officials in the central city(ies) must be among those agreeing to the redesignation.

(g) Redesignation of an MPO covering more than one UZA requires the approval of the Governor(s) and local officials representing 75 percent of the population in the metropolitan planning area covered by the current MPO. The local officials in the central city(ies) in each urbanized area must be among those agreeing to the redesignation.

(h) The voting membership of an MPO policy body designated/redesignated subsequent to December 18, 1991, and serving a TMA, must include representation of local elected officials, officials of agencies that administer or operate major modes or systems of transportation, e.g., transit operators, sponsors of major local airports, maritime ports, rail operators, etc. (including all transportation agencies that were included in the MPO on June 1, 1991), and appropriate State officials. Where agencies that operate other major modes of transportation do not already have a voice on existing MPOs, the MPOs (in cooperation with the States) are encouraged to provide such agencies a voice in the decision making process, including representation/membership



on the policy body and/or other appropriate committees. Further, where appropriate, existing MPOs should increase the representation of local elected officials on the policy board and other committees as a means for encouraging their greater involvement in MPO processes. Adding such representation to an MPO will not, in itself, constitute a redesignation action.

(i) Where the metropolitan planning area boundary for a previously designated MPO needs to be expanded, the membership on the MPO policy body and other committees, should be reviewed to ensure that the added area has appropriate representation.

(j) Adding membership (e.g., local elected officials and operators of major modes or systems of transportation, or representatives of newly urbanized areas) to the policy body or expansion of the metropolitan planning area does not automatically require redesignation of the MPO. This may be done without a formal redesignation. The Governor and MPO shall review the previous MPO designation, State and local law, MPO bylaws, etc., to determine if this can be accomplished without a formal redesignation. If redesignation is considered necessary, the existing MPO will remain in effect until a new MPO is formally designated or the existing designation is formally revoked in accordance with the procedures of this section.

**§ 1410.308 Establishing the geographic boundaries for metropolitan transportation planning areas.**

(a) The metropolitan planning area boundary shall, as a minimum, cover the UZA(s) and the contiguous geographic area(s) likely to become urbanized within, at a minimum, the twenty year forecast period covered by the transportation plan described in § 1410.322.

(1) For existing MPOs, unless modified by agreement of the Governor and the MPO, the planning area boundaries shall be those in existence as of June 9, 1998. For MPOs designated after June 9, 1998, the boundaries shall be those agreed to by the Governor and local officials as indicated in § 1410.306(a).

(2) The boundary may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) For new MPOs, the planning area boundary shall reflect agreements between the MPO and the State DOT regarding the relationship of the metropolitan planning area boundary to any nonattainment and maintenance

area within its designated limits or contiguous nonattainment or maintenance area excluded from the boundary.

(b) The metropolitan planning area for a new UZA served by an existing or new MPO shall be established in accordance with these criteria. The current planning area boundaries for previously designated UZAs shall be reviewed and modified if necessary to comply with these criteria.

(c) In addition to the criteria in paragraph (a) of this section, the planning areas currently in use for all transportation modes should be reviewed before establishing the metropolitan planning area boundary. Where appropriate, adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes and their operational integration, and promotes efficient overall transportation investment strategies in support of mobility and accessibility.

(d) Approval of metropolitan planning area boundaries by the FHWA and/or the FTA is not required. However, metropolitan planning area boundary maps must be submitted to the FHWA and the FTA after their approval by the MPO and the Governor and be made publicly available.

(e) The STP funds suballocated to urbanized areas greater than 200,000 in population shall not be utilized for projects outside the metropolitan planning area boundary.

**§ 1410.310 Agreements among organizations involved in the planning process.**

(a) The responsibilities for cooperatively carrying out transportation planning and programming shall be clearly identified in an agreement or memorandum of understanding among the State(s), operators of publicly owned mass transit, and the MPO.

(b) Where project development activities are conducted under the planning process, they shall be documented in an agreement between the MPO and the applicable project sponsor addressing, at a minimum, the provisions of § 1410.318.

(c) In nonattainment or maintenance areas, if the MPO is not designated as the agency responsible for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be an agreement between the MPO and the designated agency describing their respective roles and responsibilities for air quality related transportation planning.

(d) Where the parties involved agree, the requirement for agreements specified in paragraphs (a), (b), and (c) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process in the unified planning work program or a prospectus.

(e) If the metropolitan planning area does not include the entire nonattainment or maintenance area, there shall be an agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the metropolitan planning area but within the nonattainment or maintenance area. The agreement must indicate how the total transportation related emissions for the nonattainment or maintenance area, including areas both within and outside the metropolitan planning area, will be treated for the purposes of determining conformity in accordance with the U.S. EPA conformity regulation (40 CFR parts 51 and 93). The agreement shall address policy mechanisms for resolving conflicts concerning transportation related emissions that may arise between the metropolitan planning area and the portion of the nonattainment or maintenance area outside the metropolitan planning area. Proposals to exclude a portion of the nonattainment or maintenance area from the planning area boundary shall be coordinated with the FHWA, the FTA, the EPA, and the State air quality agency before a final boundary decision is made for the metropolitan planning area.

(f) Where more than one MPO has authority within a metropolitan planning area, a nonattainment or maintenance area, and/or in the case of adjoining metropolitan planning areas, there shall be an agreement between the State department(s) of transportation and the MPOs describing how the processes and projects will be coordinated to assure the development of an overall transportation plan for the planning area(s). In metropolitan planning areas that are nonattainment or maintenance areas, the agreement shall include State and local air quality agencies, and be consistent with the provisions of § 1410.312(c). The agreement shall address policy mechanisms for resolving potential conflicts that may arise between the MPOs, e.g., issues related to the exclusion of a portion of the nonattainment area from the planning area boundary.

(g) Where the planning process develops an ITS Integration Strategy

under the provisions of § 1410.322(b)(11), there shall be an agreement among the MPO, the State DOT, the transit operator and other agencies as described in the ITS Integration Strategy. This agreement shall address policy and operational issues that will affect the successful implementation of the ITS Integration Strategy, including at a minimum ITS project interoperability, utilization of ITS related standards, and the routine operation of the projects identified in the ITS Integration Strategy;

(h) To the extent possible, a single cooperative agreement containing the understandings required by paragraphs (a) through (c) of this section among the State(s), the MPO, publicly owned operators of mass transportation services, and air quality agencies may be developed. Where the participating planning organizations desire, they may further consolidate agreements required by paragraphs (d) through (g) of this section with those addressed in paragraphs (a) through (c) of this section.

(i) For all requirements specified in paragraphs (a) through (h) of this section, existing agreements shall be reviewed by the MPO, the State DOT and the transit operator for compliance and reaffirmed or modified as necessary to ensure participation by all appropriate modes.

#### **§ 1410.312 Planning process organizational relationships.**

(a) The MPO in cooperation with the State and with operators of publicly owned transit services shall be responsible for carrying out the metropolitan transportation planning process. The MPO, the State and transit operator(s) shall cooperatively determine their mutual responsibilities in the conduct of the planning process. They shall cooperatively develop the unified planning work program, transportation plan, and transportation improvement program specified in §§ 1410.314 through 1410.332. In addition, the development of the plan and TIP shall be coordinated with other providers of transportation, e.g., sponsors of regional airports, maritime port operators, rail freight operators, and where appropriate, planning agencies in Mexico and/or Canada.

(b) The MPO shall approve the metropolitan transportation plan, plan amendments and plan updates. The MPO and the Governor shall approve the metropolitan transportation improvement program and any amendments.

(c) In nonattainment or maintenance areas:

(1) The transportation and air quality planning processes shall be coordinated;

(2) TCMs proposed for FHWA and FTA funding and/or approvals shall come from a plan and TIP that fully meet the requirements of this subpart (new TCMs authorized to proceed during a conformity lapse will meet the requirements of this subpart if they are included in an interim plan and program and approved into a SIP with emission reduction benefits); and

(3) MPOs shall participate in the development of motor vehicle emissions budgets, inventories and other transportation related air quality activities undertaken to develop SIPs to the extent required by the Clean Air Act (42 U.S.C. 7504).

(d) In nonattainment or maintenance areas for transportation related pollutants, the MPO shall not approve any transportation plan or program which does not conform with the SIP, as determined in accordance with the U.S. EPA conformity regulation (40 CFR parts 51 and 93).

(e) If more than one MPO has authority in a metropolitan planning area (including multi-State metropolitan planning areas) or in an area which is designated as nonattainment or maintenance for transportation related pollutants, the MPOs and the Governor(s) shall cooperatively establish the boundaries of the metropolitan planning area (addressing the required twenty year planning horizon and relationship to the nonattainment or maintenance areas) and the respective jurisdictional responsibilities of each MPO. The MPOs shall consult with each other and the State(s) to assure that plans and transportation improvement programs are coordinated for the entire metropolitan planning area, including, but not limited to, coordinated data collection, analysis and plan development. Alternatively, a single plan and/or TIP for the entire metropolitan area may be developed jointly by the MPOs in cooperation with their planning partners. Coordination efforts shall be documented in subsequent transmittals of the unified planning work program (UPWP) and various planning products (the plan, TIP, etc.) to the State(s), the FHWA, and the FTA.

(f) The FTA and the FHWA must designate as transportation management areas all UZAs over 200,000 population as determined by the most recent decennial census. The TMAs so designated and those designated subsequently by the FTA and the FHWA (including those designated upon request of the MPO and the Governor)

must comply with the special requirements applicable to such areas regarding congestion management systems, project selection, and planning certification. The TMA designation applies to the entire metropolitan planning area boundary. If a metropolitan planning area encompasses a TMA and other UZA(s), the designation applies to the entire metropolitan planning area regardless of the population of constituent UZAs.

(g) In TMAs, the congestion management system shall be developed as part of the metropolitan transportation planning process.

(h) The State shall cooperatively participate in the development of metropolitan transportation plans and metropolitan plans shall be coordinated with the statewide transportation plan. The relationship of the statewide transportation plan and the metropolitan plan is specified in subpart B of this part.

(i) Where a metropolitan planning area includes Federal public lands and/or Indian Tribal lands, the affected Federal agencies and Indian Tribal Governments shall be consulted in the development of transportation plans and programs.

(j) Discretionary grants awarded by the FHWA and the FTA under section 1221 of the TEA-21 (23 U.S.C. 101 note) (Transportation and Community and System Preservation Pilot Program), sections 1118 and 1119 of the TEA-21 (Borders and Corridors) and section 3037 (49 U.S.C. 5309 note) (Access to Jobs) shall be included in the appropriate metropolitan plan and program, except where these funds are utilized for planning and/or research activities. Applicants shall coordinate with the appropriate MPO to ensure that such projects are consistent with the provisions of this subpart. Where planning and research activities are funded under the Transportation and Community and System Preservation Pilot Program or the Borders and Corridors Program, they shall be identified in the Unified Planning Work Program as identified at § 1410.314.

#### **§ 1410.314 Planning tasks and unified work program.**

(a) The MPO(s) in cooperation with the State and operators of publicly owned transit shall develop unified planning work programs (UPWPs) that meet the requirements of 23 CFR part 420, subpart A, and:

(1) Discuss the planning priorities facing the metropolitan planning area and describe all metropolitan transportation and transportation-related air quality planning activities



anticipated within the area during the next one or two year period, regardless of funding sources or agencies conducting activities, in sufficient detail to indicate who will perform the work, the schedule for completing it and the products that will be produced; and

(2) Document planning activities to be performed with funds provided under title 23 and Chapter 53 of title 49 U.S.C.

(b) Arrangements may be made with the FHWA and the FTA to combine the UPWP requirements with the work program for other Federal sources of planning funds.

(c) In areas not designated as TMAs and which are in attainment for air quality purposes, the MPO in cooperation with the State and transit operator(s), with the approval of the FHWA and the FTA, may prepare a simplified statement of work, in lieu of a UPWP, that describes who will perform the work and the work that will be accomplished using Federal funds (administered under title 23 U.S.C. and Chapter 53 of title 49 U.S.C. If a simplified statement of work is used, it may be submitted as part of the statewide planning work program, in accordance with 23 CFR part 420.

(d) MPOs, which include non-attainment or maintenance areas, should consult with the US EPA and state/local air agencies in the development of their UPWP regarding appropriate tasks to support attainment of air quality standards.

#### § 1410.316 Transportation planning process and plan development.

(a) Each metropolitan planning process shall provide for consideration of projects and strategies that will:

(1) Support the economic vitality of the metropolitan planning area, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety and security of the transportation system for motorized and non-motorized users;

(3) Increase the accessibility and mobility options available to people and for freight;

(4) Protect and enhance the environment, promote energy conservation, and improve quality of life;

(5) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(6) Promote efficient system management and operation; and

(7) Emphasize the efficient preservation of the existing transportation system.

(b) In addition, the metropolitan transportation planning process shall

develop and adopt a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs. To attain these objectives the process as developed shall meet the requirements and criteria as follows:

(1) Require a minimum public comment period of 45 days before the public involvement process is initially adopted or revised;

(2) Provide timely information about transportation issues and processes (including but not limited to initiation of plan and TIP updates, revisions and/or other modifications and the general structure of the planning process) to citizens, affected public agencies, representatives of transportation agency employees, users of public transit, freight shippers, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs and projects (including but not limited to central city and other local jurisdiction concerns);

(3) Provide reasonable public access to technical and policy information used in the development of plans and TIPs and open public meetings where matters related to the Federal-aid highway and transit programs are being considered;

(4) Require adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited to, approval of plans and TIPs (in nonattainment areas classified as serious and above, the comment period shall be at least 30 days for the plan, TIP and major amendment(s));

(5) Demonstrate explicit consideration, recognition and feedback to public input received during the planning and program development processes, including responses to input received from minority, elderly, low-income, and persons with disabilities populations;

(6) Seek out and consider the needs of those traditionally under served by existing transportation systems, including, but not limited to, low-income, the elderly, persons with disabilities and minority populations;

(7) When comments are received on the draft transportation plan or TIP (including the financial plan) as a result of the public involvement process or the interagency consultation process required under the U.S. EPA conformity regulations, a summary, analysis, and report on the disposition of comments

shall be made part of the final plan and TIP;

(8) If the final transportation plan or TIP differs significantly from the one which was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available;

(9) Public involvement processes shall be periodically reviewed by the MPO in terms of their effectiveness in assuring that the process provides full and open access to all, with specific attention to the effectiveness of efforts to engage persons with disabilities, minority individuals, the elderly and low income populations;

(10) These procedures will be reviewed by the FHWA and the FTA during certification reviews for TMAs, and as otherwise necessary for all MPOs, to assure that full and open access is provided to MPO decision making processes;

(11) Metropolitan public involvement processes shall be coordinated with statewide public involvement processes and with project development public involvement processes wherever possible to enhance public consideration of the issues, plans, and programs and reduce redundancies and costs.

(c) Transportation plan development and plans shall be consistent with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-1) and implementing regulations (49 CFR part 21 and 23 CFR part 230); section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324); the Older Americans Act of 1965, as amended (42 U.S.C. 6101); the Americans With Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327, as amended) and implementing regulations (49 CFR parts 27, 37, and 38); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations (49 CFR part 35), which ensure that no person shall, on the grounds of race, color, sex, national origin, age, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal assistance from the United States Department of Transportation. Consistency shall be demonstrated through:

(1) An assessment covering the entire metropolitan planning area, including at a minimum the following:

(i) A geographic and demographic profile of the metropolitan planning

area that identifies the low-income and minority, and where appropriate, the elderly and persons with disabilities components of this profile.

(ii) The transportation services available to and planned for these segments of the metropolitan planning area's population, and

(iii) Any disproportionately high and adverse environmental impacts, including interrelated social and economic impacts, affecting these populations, consistent with the provisions of Executive Order 12898 as implemented through U.S. DOT Order 5610.2 and FHWA Order 6640.23. Adverse effects can include a denial of or a reduction in benefits;

(2) Consideration of comments received during public involvement efforts (consistent with the provisions of paragraph (b) of this section to ensure that expressed concerns of the elderly, low-income individuals, minority individuals and persons with disabilities, have been addressed during plan and program decision making;

(3) Identification of prior and planned efforts to address any disproportionately high and adverse effects that are found;

(4) The results of paragraphs (c)(1), (2), and (3) of this section will be documented in a manner to permit public review during appropriate project development activities. In accordance with Executive Order 12898, DOT Order 5610.2, and FHWA Order 6640.23, nothing in this subpart is intended to nor shall create any right to judicial review of any action taken by the agencies, their officers or recipients under this subpart to comply with such orders.

(d) The transportation planning process shall identify actions necessary to comply with the Americans With Disabilities Act of 1990, U.S. DOT regulations "Transportation for Individuals With Disabilities" (49 CFR parts 27, 37, and 38) and section 504 of the Rehabilitation Act of 1973 and implementing regulations (49 CFR part 35).

(e) The transportation plan development process shall provide for the involvement of traffic, ridesharing, parking, transportation safety and enforcement agencies; commuter rail operators; airport and port authorities; toll authorities; appropriate private transportation providers and where appropriate city officials; freight shippers; transit users.

(f) The transportation planning process shall provide for the involvement of local, State, and Federal environmental resource and permit agencies as appropriate.

(g) The transportation planning process shall provide for the involvement of Indian Tribal Governments and the Secretary of Interior on a consultation basis for the portions of the plan affecting areas under the jurisdiction of an Indian Tribal Government.

(h) Simplified planning procedures may be proposed in non-TMAs which are in attainment for air quality purposes. The FHWA and the FTA shall review the proposed procedures for consistency with the requirements of this section.

(i) The metropolitan transportation planning process shall include preparation of technical and other reports to assure documentation of the development, refinement, and update of the transportation plan. The reports shall be reasonably available to interested parties, consistent with paragraph (b) of this section.

(j) The metropolitan planning process should provide a forum to coordinate all federally funded non-emergency transportation services within the metropolitan planning area. Where coordination processes are developed within the transportation planning process, at a minimum they should address the planning and delivery of services supporting access to jobs and reverse commute options, relying where feasible on existing processes and procedures.

#### **§ 1410.318 Relation of planning and project development processes.**

(a) In order to coordinate and streamline the planning and NEPA processes, the planning process, through the cooperation of the MPO, the State DOT and the transit operator, shall provide the following to the NEPA process:

(1) An identification of an initial statement of purpose and need for transportation investments;

(2) Findings and conclusions regarding purpose and need, identification and evaluation of alternatives studied in planning activities (including but not limited to the relevant design concepts and scope of the proposed action), and identification of the alternative included in the plan;

(3) An identification of the planning documents that provide the basis for paragraphs (a)(1) and (a)(2) of this section; and

(4) Formal expressions of policy support or comment by the planning process participants on paragraphs (a)(1) and (a)(2) of this section.

(b) The following sources of information shall be utilized to satisfy

paragraph (a) of this section at a level of detail agreed to by the MPO, the State DOT, and the transit operator:

(1) Inventories of social, economic and environmental resources and conditions;

(2) Analyses of economic, social and environmental consequences;

(3) Evaluation(s) of transportation benefits, other benefits, costs, and consequences, at a geographic scale agreed to by the planning participants, of alternatives, including but not limited to the relevant design concepts and scope of the proposed action;

(4) Data and supporting analyses to facilitate funding related decisions by Federal agencies where appropriate or required, including but not limited to 49 CFR part 611.

(c) The products resulting from paragraphs (a) and (b) of this section shall be reviewed early in the NEPA process in accordance with § 1420.201 to determine their appropriate use.

(d) In order to streamline subsequent project development analyses and studies, and promote better decision making, the FTA and the FHWA strongly encourage all Federal, State, and local agencies with subsequent project level responsibilities for investments included in a transportation plan to do the following:

(1) Participate in planning analyses and studies to the extent possible;

(2) Provide early identification of key concerns for later consideration and analysis as needed; and

(3) Utilize the sources of information identified in paragraph (b) of this section.

(e) The analyses conducted under paragraph (b)(3) of this section may serve as the alternatives analysis required by 49 U.S.C. 5309(e) for new fixed guideway transit systems and extensions and the information required under 49 CFR part 611 shall be generated.

(f) Any decision by the Secretary concerning a transportation plan or transportation improvement program developed in accordance with this part shall not be considered to be a Federal action subject to review under NEPA (42 U.S.C. 4321 *et seq.*). At the discretion of the MPO, in cooperation with the State DOT and the transit operator, an environmental analysis may be conducted on a transportation plan.

(g) The FHWA and the FTA project level actions, including but not limited to issuance of a categorical exclusion, finding of no significant impact or final environmental impact statement under 23 CFR part 1420, approval of right of way acquisition, interstate interchange approvals, approvals of HOV

conversions, funding of ITS projects, final design and construction, and transit vehicle acquisition, may not be completed unless the proposed project is included in a plan and the phase of the project for which Federal action is sought is included in the metropolitan TIP. None of these project-level actions can occur in nonattainment and maintenance areas unless the project conforms according to the requirements of the US EPA conformity regulation (40 CFR parts 51 and 93).

**§ 1410.320 Congestion management system and planning process.**

(a) In TMA's designated as nonattainment for ozone or carbon monoxide, Federal funds may not be programmed for any project that will result in a significant increase in carrying capacity for single occupant vehicles (a new general purpose highway on a new location or adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks) unless the project results from a congestion management system (CMS) meeting the requirements of 23 CFR part 500. Such projects shall incorporate all reasonably available strategies to manage the single occupant vehicle (SOV) facility effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies, as appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall be committed to by the State and the MPO for implementation in a timely manner, but no later than the completion date for the SOV project.

(b) In TMA's, the planning process must include the development of a CMS that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management.

(c) The effectiveness of the congestion management system in enhancing transportation investment decisions and improving the overall efficiency of the metropolitan area's transportation systems and facilities shall be evaluated periodically, preferably as part of the metropolitan planning process.

**§ 1410.322 Transportation plan content.**

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a twenty year planning horizon. The plan shall include both long-range and short-range strategies/actions, including, but not limited to, operations and management activities, that lead to the systematic

development of an integrated intermodal transportation system that facilitates the safe and efficient movement of people and goods in addressing current and future transportation demand. The transportation plan shall be reviewed and updated every five years in attainment areas and at least triennially in nonattainment and maintenance areas to confirm its validity and its consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period. The transportation plan must be approved by the MPO. Update processes shall include a mechanism for ensuring that the MPO, the State DOT and the transit operator agree that the data utilized in preparing other existing modal plans providing input to the transportation plan are valid and benchmarked in relation to each other and the transportation plan. In updating a plan, the MPO shall base the update on the latest estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. Reaffirmation or revisions of metropolitan plan contents and supporting analyses produced by an update review require approval by the MPO.

(b) In addition, the plan shall, consistent with the following:

(1) Identify the projected transportation demand of persons and goods in the metropolitan planning area over the period of the plan;

(2) Identify adopted management and operations strategies (e.g., traveler information, traffic surveillance and control, incident and emergency response, freight routing, reconstruction and work zones management, weather response, pricing, fare payment alternatives, public transportation management, demand management, alternative routing, telecommuting, parking management, and intermodal connectivity) that address the need for improved system performance and the delivery of transportation services to customers under varying conditions;

(3) Identify pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g);

(4) Reflect the consideration given to the results of the congestion management system, including in TMA's that are nonattainment areas for carbon monoxide and ozone, identification of SOV projects that result from a congestion management system that meets the requirements of 23 CFR part 500;

(5) Assess capital investment and other measures necessary to preserve the existing transportation system

(including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities) and make the most efficient use of existing transportation facilities to relieve vehicular congestion and enhance the mobility of people and goods;

(6) Include design concept and scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of the source of funding, in nonattainment and maintenance areas to permit conformity determinations under the U.S. EPA conformity regulations at 40 CFR parts 51 and 93. In all areas, all proposed improvements shall be described in sufficient detail to develop cost estimates;

(7) Reflect a multimodal evaluation of the transportation, socioeconomic, environmental, and financial impact of the overall plan;

(8) Reflect, to the extent that they exist, consideration of: Comprehensive long-range land use plan(s) and development objectives; State and local housing goals and strategies, community development and employment plans and strategies, and environmental resource plans; linking low income households with employment opportunities as reflected in work force training and labor mobility plans and strategies; energy conservation goals; and the metropolitan area's overall social, economic, and environmental goals and objectives;

(9) Indicate, as appropriate, proposed transportation enhancement activities as defined in 23 U.S.C. 101(a); and

(10) Include a financial plan that demonstrates the consistency of proposed transportation investments (including illustrative projects where identified in the financial plan) with already available and projected sources of revenue. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably be expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the total (existing plus planned) transportation system over the period of the plan. Financial estimates utilized in preparing transportation plans (and TIPs) shall be developed through procedures cooperatively established and mutually agreed to by the MPO, the State DOT and the transit operator(s). The estimated revenue by existing revenue source (local, State, Federal and private) available for transportation projects

shall be determined and any shortfalls identified. Proposed new revenues and/or revenue sources to cover shortfalls shall be identified, including strategies for ensuring their availability for proposed investments. Existing and proposed revenues shall cover all forecasted capital, operating, management, and maintenance costs. All cost and revenue projections shall be based on the data reflecting the existing situation and historical trends. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of projects and programs to reach air quality compliance.

(11) Include an ITS integration strategy for the purposes of guiding and coordinating the management and funding of ITS investments supported with highway trust fund dollars to achieve an integrated regional system. The scope of the integration strategy shall be appropriate to the scale of investment anticipated for ITS during the life of the plan and shall address the resource commitments and staging of planned investments. Provision shall be made to include participation from the following agencies, at a minimum, in the development of the integration strategy: Highway and public safety agencies; appropriate Federal lands agencies; State motor carrier agencies as appropriate; and other operating agencies necessary to fully address regional ITS integration. In determining how ITS investments will meet metropolitan goals and objectives, the integration strategy shall clearly assess existing and future ITS systems, including their functions and electronic information sharing expectations. Unique regional ITS initiatives (a program of related projects) that are multi-jurisdictional and/or multi-modal, ITS projects that affect regional integration of ITS systems, and projects which directly support national interoperability shall be identified. Documentation within the plan shall reflect the scale of investment and the needs and size of the metropolitan area.

(c) There must be adequate opportunity for public official (including elected officials) and citizen involvement in the development of the transportation plan before it is approved by the MPO, in accordance with the requirements of § 1410.316(b). Such procedures shall include opportunities for interested parties (including citizens, affected public agencies, representatives of transportation agency employees, freight shippers, representatives of users of public transit, providers of freight transportation services, and private

providers of transportation) to be involved in the early stages of the plan development/update process. The procedures shall include publication of the proposed plan or other methods to make it readily available for public review and comment and, in nonattainment TMAs, an opportunity for at least one formal public meeting annually to review planning assumptions and the plan development process with interested parties and the general public. The procedures also shall include publication of the approved plan or other methods to make it readily available for information purposes.

(d) In nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new/revised plan in accordance with the Clean Air Act and the EPA conformity regulations (40 CFR parts 51 and 93). If a conformity determination cannot be accomplished by either the MPO and or the FHWA and the FTA, the results will be communicated to the Governor or the Governor's designee and the public transit operator with an explanation of the potential consequences.

(e) The FHWA and the FTA do not approve transportation plans. However, Federal actions and approvals, including, but not limited to, conformity determinations, planning findings (pursuant to § 1410.322(b)), STIP approvals, completion of the NEPA process, grant agreements, and project authorizations, are based on a transportation plan with a horizon of at least twenty years on the effective date of the plan. Plans that remain substantially unchanged (i.e., regionally significant projects in attainment areas and non-exempt projects in nonattainment and maintenance areas have not been added) after adoption may serve as the basis for subsequent Federal actions until such time as the next update. In attainment areas the effective date of the plan shall be its date of adoption by the MPO. In nonattainment and maintenance areas, the effective date shall be the date of a conformity determination by the FHWA and the FTA.

(f) Although transportation plans do not need to be approved by the FHWA or the FTA, copies of any new/revised plans must be provided to each agency.

(g) During a conformity lapse metropolitan areas can prepare an interim plan as a basis for advancing projects that are eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93). In areas which expect to return to conformity earlier

than six months, the emphasis should be on reestablishing conformity, rather than embarking on developing an interim plan and TIP.

#### § 1410.324 Transportation improvement program content.

(a) The metropolitan transportation planning process shall include development of a transportation improvement program (TIP) for the metropolitan planning area by the MPO in cooperation with the State and public transit operators.

(b) The TIP must be updated at least every two years and approved by the MPO and the Governor. The frequency and cycle for updating the TIP must be compatible with the STIP development and approval process. Since the TIP becomes part of the STIP, the TIP lapses when the FHWA and the FTA approval for the STIP lapses. In the case of extenuating circumstances, the FHWA and the FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the STIP in accordance with § 1410.222(c). TIP extensions shall not be granted in nonattainment or maintenance areas. Although metropolitan TIPs are not approved individually by the FHWA or the FTA, they are approved as part of the STIP approval action by the FTA and the FHWA. Copies of any new or amended TIPs must be provided to each agency. Additionally, in nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new or amended TIPs (unless the new amended TIP consists entirely of exempt projects) in accordance with the Clean Air Act requirements and the EPA conformity regulations (40 CFR parts 51 and 93).

(c) There must be reasonable opportunity for public comment in accordance with the requirements of § 1410.316(b) and, in nonattainment TMAs, an opportunity for at least one formal public meeting during the TIP development process. This public meeting may be combined with the public meeting required under § 1410.322(c). The proposed TIP shall be published or otherwise made readily available for review and comment. Similarly, the approved TIP shall be published or otherwise made readily available for information purposes.

(d) The TIP shall cover a period of not less than three years, but may cover a longer period if it identifies priorities and financial information for the additional years. The TIP must include a priority list of projects to be advanced in the first three years. As a minimum,

the priority list shall group the projects that are to be undertaken in each of the years, i.e., year one, year two, year three. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the U.S. EPA conformity regulation (40 CFR parts 51 and 93) and shall provide for their timely implementation.

(e) The TIP shall be financially constrained by year and include a financial plan that demonstrates which projects can be implemented using current revenue sources and which projects are to be implemented using proposed revenue sources (while the existing transportation system is being adequately operated and maintained). The financial plan shall be developed by the MPO in cooperation with the State and the transit operator. Financial estimates utilized in preparing TIPs shall be developed through procedures cooperatively established and mutually agreed to by the MPO, the State DOT and the transit operator(s). It is expected that the State would develop this information as part of the STIP development process and that the estimates would be refined through this process. Only projects for which construction and operating funds can reasonably be expected to be available (and illustrative projects) may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial analysis, the MPO shall take into account all projects and strategies funded under title 23, U.S.C., 49 U.S.C. Chapter 53, other Federal funds, local sources, State assistance, and private participation. In nonattainment and maintenance areas, projects included for the first two years of the current TIP shall be limited to those for which funds are available or committed.

(f) The TIP shall include:

(1) All transportation projects, or identified phases of a project, (including pedestrian walkways, safety, bicycle transportation facilities and transportation enhancement projects) within the metropolitan planning area proposed for funding under title 23, U.S.C., and Federal Lands Highway projects. Title 49, U.S.C., Emergency relief projects (except those involving substantial functional, locational or capacity changes) and planning and research activities (except those funded with NHS, STP, and/or Minimum Guarantee funds) are exempt from this requirement. Planning and research activities funded with NHS, STP and/or Minimum Guarantee funds may be

excluded from the TIP by agreement of the State and the MPO;

(2) Only projects that are consistent with the transportation plan;

(3) All regionally significant transportation projects for which an FHWA or FTA action is required whether or not the projects are to be funded with title 23, U.S.C., or title 49, U.S.C., funds, e.g., addition of an interchange to the Interstate System with State, local, and/or private funds, demonstration projects not funded under titles 23 and 49, U.S.C., etc.;

(4) Any FTA or FHWA funded or approved projects submitted to EPA for consideration as a SIP TCM;

(5) For air quality analysis in nonattainment and maintenance areas and informational purposes in other areas, all regionally significant transportation projects proposed to be funded with Federal funds, including intermodal facilities, not covered in paragraphs (f)(1) or (f)(3) of this section; and

(6) For air quality analysis in nonattainment and maintenance areas and informational purposes in other areas, all regionally significant projects to be funded with non-Federal funds.

(g) With respect to each project or project phase under paragraph (f) of this section the TIP shall include:

(1) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project or phase;

(2) Estimated total project cost (which may extend beyond the three years of the TIP);

(3) The amount of Federal funds proposed to be obligated during each program year for the project or phase of the project;

(4) Proposed category and source of Federal and non-Federal funds;

(5) Identification of the recipient/subrecipient and State and local agencies responsible for carrying out the project or phase of the project;

(6) In nonattainment and maintenance areas, identification of those projects or phases of projects which are identified as TCMs in the applicable SIP or are new TCMs with emissions benefits being submitted for SIP approval during a conformity lapse; and

(7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects or phases of projects which will implement the plans.

(h) In nonattainment and maintenance areas, projects included shall be specified in sufficient detail (design concept and scope) to permit air quality analysis in accordance with the U.S. EPA conformity requirements (40 CFR parts 51 and 93).

(i) Projects proposed for FHWA and/or FTA funding that are not considered by the State and the MPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, and work type using applicable classifications under 23 CFR 1420.117 (c) and (d). In nonattainment and maintenance areas, classifications must be consistent with the exempt project classifications contained in the U.S. EPA conformity requirements (40 CFR parts 51 and 93). In addition, projects funded under Chapter 2 of 23 U.S.C. may be grouped by funding category and shown as one line unless they are determined to be regionally significant.

(j) Projects utilizing Federal funds that have been allocated to the area pursuant to 23 U.S.C. 133(d)(3)(E) shall be identified.

(k) The total Federal share of projects included in the TIP proposed for funding under 49 U.S.C. 5307 may not exceed formula backed apportioned funding levels available to the area for the program year.

(l) Procedures or agreements that distribute suballocated Surface Transportation Program or urbanized area formula (49 U.S.C. 5307) funds to individual jurisdictions or modes within the metropolitan area by predetermined percentages or formulas are inconsistent with the legislative provisions that require MPOs in cooperation with the State and transit operators to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be addressed as part of the planning process.

(m) For the purpose of including transit projects funded through Capital Investment Grants or Loans (49 U.S.C. 5309) in a TIP, the following approach shall be followed:

(1) The total Federal share of projects included in the first year of the TIP shall not exceed levels of funding committed to the area; and

(2) The total Federal share of projects included in the second, third and/or subsequent years of the TIP may not exceed levels of funding committed, apportioned, appropriated (including carryover and unobligated balances reasonably expected to be available, to the area.

(n) As a management tool for monitoring progress in implementing the transportation plan, the TIP shall:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including intermodal trade-offs) for inclusion in



the TIP and any changes in priorities from previous TIPs;

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects;

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, including the reasons for any significant delays in the planned implementation and strategies for ensuring their advancement at the earliest possible time; and

(4) In nonattainment and maintenance areas, include a list of all projects found to conform in a previous TIP. Projects shall be included in this list until construction has been fully authorized.

(5) Serve as a basis for an annual listing of projects for which Federal funds have been obligated, supplemented as appropriate to ensure annual public access to information on the obligation of funds.

(o) In order to maintain or establish operations, in the absence of an approved metropolitan TIP, the FTA and/or the FHWA Administrators, as appropriate, may approve operating assistance.

(p) During a conformity lapses metropolitan areas may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a lapse (as defined in 40 CFR parts 51 and 93). In areas which expect to return to conformity earlier than six months, the emphasis should be on reestablishing conformity, rather than embarking on developing an interim plan and TIP.

#### **§ 1410.326 Transportation Improvement program modification.**

The TIP may be modified at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation related pollutants, if the TIP is modified by adding or deleting non-exempt projects or is replaced with a new TIP, a new conformity determinations by the MPO and the FHWA and the FTA shall be made. Public involvement procedures consistent with § 1410.316(b) shall be utilized in modifying the TIP, except that these procedures are not required for TIP modifications that only involve projects of the type covered in § 1410.324(i).

#### **§ 1410.328 Metropolitan transportation improvement program relationship in statewide TIP.**

(a) After approval by the MPO and the Governor, the TIP shall be included without modification, directly or by reference, in the STIP program required under 23 U.S.C. 135 and consistent with § 1410.220, except that in nonattainment and maintenance areas, a conformity finding by the FHWA and the FTA must be made before it is included in the STIP. After approval by the MPO and the Governor, a copy shall be provided to the FHWA and the FTA.

(b) The State shall notify the appropriate MPO and Federal Lands Highways Program agencies, e.g., Bureau of Indian Affairs and/or National Park Service, when a TIP including projects under the jurisdiction of these agencies has been included in the STIP.

#### **§ 1410.330 Transportation improvement program action by FHWA/FTA.**

(a) The FHWA and the FTA must jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing, comprehensive transportation process carried on cooperatively by the States, the MPOs and the transit operators in accordance with the provisions of 23 U.S.C. 134 and 49 U.S.C. 5307 and 5313(b). This finding shall be based on the self-certification statement submitted by the State and MPO under § 1410.334, a review of the metropolitan transportation plan and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the FHWA and the FTA must also jointly determine, in accordance with 40 CFR parts 51 and 93, that the metropolitan TIP conforms with the applicable SIP and that priority has been given to the timely implementation of transportation control measures contained in the applicable SIP. As part of their review in nonattainment and maintenance areas requiring TCMs, the FHWA and the FTA will specifically consider any comments relating to the financial plans for the plan and TIP contained in the summary of significant comments required under § 1410.316(b). If the TIP is determined to be in nonconformance with the SIP, the FHWA and FTA shall return the TIP to the Governor and the MPO with an explanation of the joint determination and an explanation of potential consequences. If the TIP is found to conform with the SIP, the Governor and MPO shall be notified of the joint finding. After the FHWA and the FTA find the TIP to be in conformance, the

TIP shall be incorporated, without modification, into the STIP, directly or by reference.

(c) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the fiscally constrained and conforming plan and TIP. The MPOs are not required to include illustrative projects in future TIPs.

#### **§ 1410.332 Selecting projects from a TIP.**

(a) Once a TIP that meets the requirements of § 1410.324 has been developed and approved, the first year of the TIP shall constitute an "agreed to" list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts. In this case, a revised "agreed to" list of projects shall be jointly developed by the MPO, the State, and the transit operator if requested by the MPO, the State, or the transit operator. If the State or transit operator wishes to proceed with a project in the second or third year of the TIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used unless the MPO, the State, and the transit operator jointly develop expedited project selection procedures to provide for the advancement of projects from the second or third year of the TIP.

(b) In areas not designated as TMAs and when § 1410.332(c) does not apply, projects to be implemented using title 23 funds other than Federal lands projects or title 49 funds shall be selected by the State and/or the transit operator, in cooperation with the MPO from the approved metropolitan TIP Federal Lands Highway Program projects shall be selected in accordance with 23 U.S.C. 204.

(c) In areas designated as TMAs where § 1410.332(c) does not apply, all title 23 and title 49 funded projects, except projects on the NHS and projects funded under the bridge, and Federal Lands Highways programs, shall be selected by the MPO in consultation with the State and transit operator from the approved metropolitan TIP and in accordance with the priorities in the approved metropolitan TIP. Projects on the NHS and projects funded under the bridge program shall be selected by the State in cooperation with the MPO, from the approved metropolitan TIP. Federal Lands Highway Program projects shall

be selected in accordance with 23 U.S.C. 204.

(d) Projects not included in the federally approved STIP shall not be eligible for funding with title 23 or title 49, U.S.C., funds.

(e) In nonattainment and maintenance areas, priority shall be given to the timely implementation of TCMs contained in the applicable SIP in accordance with the U.S. EPA conformity regulations at 40 CFR parts 51 and 93.

#### § 1410.334 Federal certifications.

(a) The State and the MPO shall annually self-certify to the FHWA and the FTA that the planning process is addressing the major issues facing the area and is being conducted in accordance with all applicable requirements of:

(1) 23 U.S.C. 134 and 49 U.S.C. 5303-5306;

(2) Sections 174 and 176 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d));

(3) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794;

(4) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 stat. 1914) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded planning projects (sec. 105(f), Public Law 97-424, 96 Stat. 2100; 49 CFR part 23);

(5) Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(6) Older Americans Act, as amended (42 U.S.C. 6101); and

(7) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities.

(8) All other applicable provisions of Federal law.

(b) The FHWA and the FTA jointly will review and evaluate the transportation planning process for each TMA (as appropriate but no less than once every three years) to determine if the process meets the requirements of this subpart.

(c) In TMAs that are nonattainment or maintenance areas for transportation related pollutants, the FHWA and the FTA will also review and evaluate the transportation planning process to assure that the MPO has an adequate process to ensure conformity of plans and programs in accordance with procedures in 40 CFR parts 51 and 93.

(d) Upon the review and evaluation conducted under paragraphs (b) and (c) of this section, the FHWA and the FTA shall take one of the following actions, as indicated:

(1) Where the process meets the requirements of this part, jointly certify the transportation planning process;

(2) Where the process substantially meets the requirements of this part, jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(3) Where the process does not meet the requirements of this part, jointly certify the planning process as the basis for approval of only those categories of programs or projects that the Administrators may jointly determine and subject to certain specified corrective actions being taken.

(e) A certification action under this section will remain in effect for three years unless a new certification determination is made sooner or a shorter term is specified in the certification report.

(f) If, upon the review and evaluation conducted under paragraph (b) or (c) of this section, the FHWA and the FTA jointly determine that the transportation planning process in a TMA does not substantially meet the requirements, they may take the following action as appropriate:

(1) Withhold up to twenty percent of the apportionment attributed to the relevant metropolitan planning area under 23 U.S.C. 133(d)(3), capital funds apportioned under 49 U.S.C. 5307-5309; or

(2) Withhold approval of all or certain categories of projects.

(g) In conducting a certification review, the FHWA and the FTA shall make provision, relying on the local public involvement processes and supplemented with other involvement strategies as appropriate, to engage the public in the review process. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

(h) The State and the MPO shall be notified of the actions taken under paragraph (f) of this section. Upon full, joint certification by the FHWA and the FTA, all funds withheld will be restored to the metropolitan area, unless the funds have lapsed.

#### Federal Transit Administration

##### 49 CFR Chapter VI

For the reasons set forth in the preamble, the Federal Transit

Administration proposes to amend Chapter VI of title 49, Code of Federal Regulations, as follows:

#### PART 613—[REMOVED]

3. Remove part 613.

4. Add part 621 to read as follows:

#### PART 621—METROPOLITAN AND STATEWIDE PLANNING

##### Subpart A—Planning

Sec.

621.100 Definitions.

##### Subpart B—Statewide Transportation Planning and programming

621.200 Statewide transportation planning and programming.

##### Subpart C—Metropolitan Transportation Planning and Programming

621.300 Metropolitan transportation planning and programming.

Authority: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303-5309; 49 CFR .151.

##### Subpart A—Planning

#### § 621.100 Definitions.

The regulations in 23 CFR 1410, subpart A, shall be followed in complying with the requirements of this subpart.

##### Subpart B—Statewide Transportation Planning and programming

§ 621.200 Statewide transportation planning and programming.

The regulations in 23 CFR 1410 subpart B, shall be followed in complying with the requirements of this subpart.

##### Subpart C—Metropolitan Transportation Planning and Programming

§ 621.300 Metropolitan transportation planning and programming

The regulations in 23 CFR part 1410, subpart C, shall be followed in complying with the requirements of this subpart.

Issued on: May 18, 2000.

Vincent F. Schimmoller,  
Acting Executive Director, Federal Highway Administration.

Nuria I. Fernandez,  
Acting Administrator, Federal Transit Administration.

[FR Doc. 00-13021 Filed 5-19-00; 1:15 pm]

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# Federal Register

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Thursday,  
May 25, 2000

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## Part IV

### Department of Transportation

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Federal Aviation Administration  
Federal Transit Administration

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23 CFR Parts 771, 1420 and 1430

49 CFR Parts 622 and 623

NEPA and Related Procedures for  
Transportation Decisionmaking,  
Protection of Public Parks, Wildlife and  
Waterfowl Refuges, and Historic Sites;  
Proposed Rule



**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Parts 771, 1420, and 1430****Federal Transit Administration****23 CFR Parts 1420 and 1430****49 CFR Parts 622 and 623****[FHWA Docket No. FHWA-99-5989]****FHWA RIN 2125-AE64; FTA RIN 2132-AA43****NEPA and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites****AGENCIES:** Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA and the FTA are issuing this notice of proposed rulemaking to update and revise their National Environmental Policy Act of 1969 (NEPA) implementing regulation for projects funded or approved by the FHWA and the FTA. The current regulation was issued in 1987 and experience since that time as well as changes in legislation, most recently by the Transportation Equity Act for the 21st Century (TEA-21), call for an updated approach to implementation of NEPA for FHWA and FTA projects and actions. Under this proposed rulemaking, the FHWA/FTA regulation for implementing NEPA would be redesignated and revised to further emphasize using the NEPA process to facilitate effective and timely decisionmaking.

This NPRM is being issued concurrently with another notice of proposed rulemaking on metropolitan and statewide transportation planning. This coordinated approach to rulemaking will further the goal of the FTA and the FHWA to better coordinate the results of the planning processes with project development activities and decisions associated with the NEPA process.

**DATES:** Comments must be received on or before August 23, 2000. For dates of public information meetings see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Submit written, signed comments to the docket number appearing at the top of this document. You must submit your comments to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All

comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To receive notification of receipt of comments you must include a pre-addressed, stamped envelope or postcard. For addresses of public information meetings see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** For the FHWA: Mr. Fred Skaer, (202) 366-2058, Office of Planning and Environment, HEPE, or Mr. L. Harold Aikens, (202) 366-0791, Office of the Chief Counsel, HCC-31. For the FTA: Mr. Joseph Ossi, (202) 366-0096, Office of Planning, TPL-22, or Mr. Scott Biehl, (202) 366-0952, Office of the Chief Counsel, TCC-30. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

Internet users may access all comments received by the U.S. DOT Dockets, Room PL401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

**Contents of Preamble**

- Background on the NEPA Rule
- Overall Strategy for Regulatory Development
- Relationship to U.S. DOT's Statewide and Metropolitan Planning Regulation and other Rulemaking Efforts
- Section-by-Section Analysis of the Proposed Rule for NEPA and Related Procedures for Transportation Decisionmaking
- Section-by-Section Analysis of the Proposed Rule for Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites.

**Public Information Meetings**

We will hold a series of seven public briefings within the comment period for the NPRM. The purposes of these briefings is to explain the content of the NPRM and encourage public input to the final rulemaking. The meetings will address this NPRM, the companion NPRM on the metropolitan and

statewide planning process and the NPRM on Intelligent Transportation Systems Architecture consistency. The meetings will be scheduled from approximately 8 a.m. to 5 p.m. at the locations listed below. Changes in the information below will be made available after the publication of this NPRM through the FHWA and the FTA websites, other public announcement avenues and the newsletters and websites of major stakeholder groups. Individuals wishing information but without access to these sources may contact the individuals listed above.

The structure of the meetings will emphasize brief presentations by the DOT staff regarding the content of the NPRM. A period for clarifying questions will be provided. Under current statutory and regulatory provisions, the DOT staff will not be permitted to engage in a substantive dialog regarding what the content of the NPRMs and the final regulations should be. Attendees wishing to express ideas and thoughts regarding the final content of the rules should direct those comments to the docket. Briefing sites will include: Boston, MA, Auditorium, Volpe National Transportation Systems Center, 55 Broadway, June 9, 2000; Atlanta, GA, Westin Peachtree Plaza Hotel, 210 Peachtree Street, June 20, 2000; Washington, D.C., Marriott Metro Center, 775 12th Street, NW, June 23, 2000; Chicago, IL, Holiday Inn Mart Plaza, 350 North Orleans Street, June 27, 2000; Denver, CO, Marriott City Center, 1701 California Street, June 30, 2000; Dallas, TX, Hyatt Regency Hotel Dallas, 300 Reunion Boulevard, July 11, 2000; and, San Francisco, CA, Radisson Miyako, 1625 Post Street, July 19, 2000.

As part of the outreach process planned for these proposed rules, the FHWA/FTA will be conducting a national teleconference on June 15, 2000 from 1 to 4 p.m., e.t., through the auspices of the Center for Transportation and the Environment at North Carolina State University. The teleconference will be accessible through numerous downlink locations nationwide and further information can be obtained from Ms. Katie McDermott at [kpm@unity.ncsu.edu](mailto:kpm@unity.ncsu.edu) or (919) 515-8034. The purpose of the teleconference is to describe the proposed new statewide and metropolitan planning, NEPA implementation, and Intelligent Transportation Systems (ITS) rules.

An overview of each of the three notices of proposed rulemakings (NPRMs) will be presented and the audience (remote and local) will have opportunities to ask questions and seek clarification of FHWA/FTA proposals. By sponsoring this teleconference it is

hoped that interest in the NPRMs is generated, that stakeholders will be well informed about FHWA/FTA proposals, and that interested parties will participate in the rulemaking process by submitting written suggestions, comments and concerns to the docket.

### Background

The FHWA and the FTA propose to update and revise the current regulation and guidance implementing the NEPA (42 U.S.C. 4321 *et seq.*) for transportation projects using Federal funds or requiring Federal approval.

In this notice of proposed rulemaking, we are clearly communicating that our NEPA responsibilities include an affirmative duty to facilitate the development of transportation proposals which represent responsible stewardship of community and natural environmental resources. In the 13 years since the NEPA regulation was last issued, the nature of the highway and transit programs has evolved to reflect our country's changing transportation needs and the impact that the transportation network can have on a complex set of environmental, community, and economic considerations. What has not changed is the role of State and local officials and Federal land management agency decision makers to define transportation investment strategies, plan for a future transportation system that best reflects their community needs, and select and set priorities for transportation projects.

The NPRM was developed by an interagency Task Force of the FHWA and the FTA with input from other DOT modal agencies, the U.S. Environmental Protection Agency (EPA), other Federal agencies and the Office of the Secretary, U.S. DOT. The Task Force reviewed all input received from the outreach process which is described below and through other sources that communicate regularly with U.S. DOT. In addition, input was provided from the field staff of the FHWA and the FTA.

Over the past thirteen years we have developed an increased understanding of effective environmental analysis, a greater commitment to prevention of adverse environmental impacts, and a realization of the increased value of integrated agency and public coordination. Given these developments, our role to ensure that transportation projects are developed through a more effective and collaborative NEPA process at the State, local, and Federal levels becomes that much more pivotal. Our environmental rule reflects the understanding that NEPA is an important tool for helping make transportation decisions, rather

than justifying decisions already made. In addition, we believe that a more coordinated approach to planning and project development (the NEPA process plus additional project level actions needed to prepare for project implementation) will contribute to more effective and environmentally sound decisions regarding investment choices and trade-offs.

By including the environmental streamlining provision in TEA-21, section 1309 of Public Law 105-178, 112 Stat. 108 at 232, the Congress intended that transportation planning and environmental considerations be better coordinated and that project delivery schedules be improved through a process that is efficient, comprehensive, and streamlined. Growing awareness of the need for a Federal role that would oversee development of a coordinated environmental review process is tempered with congressional intent that State and local decisions be respected. The most important Federal role in the transportation decisionmaking process is one where the FHWA and the FTA would facilitate other Federal agencies' early involvement and participation in NEPA activities so that redundant processes are identified and avoided. We will, in our role as lead agencies, highlight opportunities to use NEPA as a mechanism to address statutory responsibilities at Federal, State, and local levels of government. During the TEA-21 outreach process, there has been very strong support from our transportation and environmental partners for a better managed NEPA process which reflects these basic features: coordination, flexibility, and efficiency.

For these reasons, it is clear that a fundamentally new approach to NEPA is needed, one that emphasizes strong environmental policy, collaborative program solving approaches involving all levels of government and the public early in the process, and integrated and streamlined coordination and decisionmaking processes. Proposed approaches are included in this notice of proposed rulemaking. This NPRM fully supports "protection and enhancement of communities and the natural environment," one of five U.S. DOT strategic goals. Translating this strategic direction into day-to-day operations requires that appropriate changes be made to regulations and nonregulatory operating guidance.

### Overall Strategy for Regulatory Development

Our strategy for regulatory development has three principal

elements: (1) Outreach and listening to stakeholders; (2) developing improvements that will allow the FHWA, the FTA, States and metropolitan areas to demonstrate measurable progress toward achieving congressional intent and objectives; and (3) seeking ways to improve coordination and performance, both internally and with our Federal partner agencies.

### Input to Development of Notice of Proposed Rulemaking

We have used several venues to obtain feedback on how to improve the administration of NEPA. Of principal importance was the NEPA 25th Anniversary Workshop held in Chattanooga, Tennessee in 1995. Participants included a diverse group of governmental and nongovernmental individuals representing transportation and community interests, as well as those interested in protecting the natural environment. The blueprint document that resulted from the NEPA Workshop underscores the need for a fundamentally new approach to NEPA, one that focuses on decisionmaking rather than compliance.

The FHWA and the FTA, in concert with the Office of the Secretary and other modal administrations within the U.S. DOT, developed and implemented an extensive public outreach process on all elements of the TEA-21. The process began shortly after the legislation was enacted on June 9, 1998, and various types of outreach activities have been underway since that time. The initial six-month Departmentwide outreach process included twelve regional forums and over 50 focus groups and workshops (63 FR 40330, July 28, 1998). The U.S. DOT heard from over 3,000 people including members of Congress, Governors and Mayors, other elected officials, transportation practitioners at all levels, community activists and environmentalists, freight shippers and suppliers, and other interested individuals. The input received was valuable and has helped us shape implementation strategy, guidance, and regulations.

With respect to the planning and environmental provisions of TEA-21, we learned a great deal through the twelve regional forums and focus group sessions and subsequently implemented a second, more focused phase of outreach which included issuing a discussion paper, "TEA-21 Planning and Environmental Provisions: Options for Discussion," FHWA/FTA, February 1999. The content of the Options Paper reflected input received up to that time and built upon the existing statewide

and metropolitan planning regulations and our NEPA implementing regulation. We released the Options Paper on February 9, 1999, and received comments through April 30, 1999. More than 150 different sets of comments were received from State Departments of Transportation (DOTs), Metropolitan Planning Organizations (MPOs), counties, regional planning commissions, other Federal agencies, transit agencies, bicycle advocacy groups, engineering organizations, consultants, historical commissions, environmental groups, and customers—the American public. These comments were all reviewed and taken into consideration in the development of this NPRM. Another element of outreach has included meetings with our key stakeholder groups, other Federal agencies, and the regional and field staff within our agencies.

This proposed rule will be one part of a widespread agency effort to provide clear and consistent guidance on how the NEPA process can be most effectively used to help applicants make transportation decisions which reflect a concern for social, economic, and environmental well-being. It provides the framework upon which we, along with State DOTs, MPOs, transit agencies, and Federal land management agencies, can base our approach to transportation decisionmaking.

We recognize that a wide range of issues exist in the realm of transportation and the environment. Our outreach effort associated with TEA-21, as well as feedback to the Options Paper, have highlighted many areas of concern for which the FHWA and the FTA policy should be more clearly articulated. However, not all of these areas will be directly addressed as part of this rule. For many topics for which we feel regulatory treatment is unnecessary or inappropriate, we intend to issue a comprehensive package of materials to provide detailed, nonregulatory information on how to incorporate such considerations into the NEPA process. In addition, certain other topics will be the subject of individual, separate regulations or guidance.

The comprehensive package of informational materials is envisioned as a replacement both for the 1987 FHWA Technical Advisory 6640.8a on environmental documents and the FTA (formerly Urban Mass Transportation Administration) Circular 5620.1<sup>1</sup> on environmental assessments. The timing of its development is intended to be

consistent with the development of the regulations that will result from this NPRM. We anticipate that the comments we receive on the NPRM will help guide the creation of the informational materials, as well as the regulations. Thus, a more complete picture of our approach will be presented.

Further, we have been working with Federal environmental agencies to implement the environmental streamlining provisions of TEA-21. The results of those activities are described in the section-by-section analysis discussion later in this preamble.

The TEA-21 outreach effort and comments on the Options Paper have all helped guide us in developing this notice of proposed rulemaking. Comments on this NPRM are welcomed and will be taken into account prior to the issuance of a final regulation containing updated NEPA implementation requirements.

#### **Relationship to U.S. DOT's Statewide and Metropolitan Planning Regulation and Other Rulemaking Efforts**

There are four additional rulemaking activities either underway or planned which relate closely to this notice of proposed rulemaking. These include: the joint FHWA/FTA rules on statewide and metropolitan planning and on section 4(f), and the FHWA rules on acquisition of right-of-way and decision-build contracting. The relationship with the statewide and metropolitan planning rulemaking is described below, and the TEA-21 provisions and input received through the Options Paper on the other three issue areas follows:

##### *Statewide and Metropolitan Planning*

Concurrent with the release of this notice of proposed rulemaking, the U.S. DOT is issuing a notice of proposed rulemaking to update and revise its statewide and metropolitan planning regulations (23 CFR part 450 and 49 CFR part 613). As proposed in these coordinated rulemaking actions, the statewide and metropolitan planning rule and the NEPA and transportation decisionmaking rules would both be moved to new parts: 1410 and 1420, respectively. This co-location is intended to underscore the integrated nature of transportation planning and the NEPA process.

We intend to ensure that the regulatory provisions governing statewide and metropolitan planning and NEPA work in a consistent and complementary fashion, and result in sound transportation decisions. We view the changes in TEA-21 as opportunities to improve and integrate

planning and environmental processes to support more effective decisionmaking and it is in this context that both notices of proposed rulemaking were developed. It is our intent to establish consistency between the two regulations to allow our State and local transportation partners that choose to conduct social, economic, and environmental analysis at the planning stage to incorporate that analysis at the project development phase. This approach offers options for integrating project development efficiencies into the overall planning process, where States, MPOs, and transit agencies deem such action appropriate and desirable.

#### *Section 4(f) (49 U.S.C. 303)*

We propose to move the reference and citation for section 4(f)<sup>2</sup> in title 23 of the Code of Federal Regulations. This proposal removes the provisions on section 4(f) from the NEPA rule and establishes a separate regulation for section 4(f). Years of applying section 4(f) to new and unprecedented situations have led to a history of case experience which must be reflected in the regulation. As a result, the rules governing section 4(f) have grown to the point that they warrant their own part in the regulations. We can envision a separate effort to revise and update the section 4(f) rule; however, we are proposing minor changes at this time. Nevertheless, we invite comment on suggested changes to the Section 4(f) rule of a more substantive nature. A comprehensive package of informational materials that will be released concurrent with this final regulation will elaborate on the continued fully integrated relationship between the NEPA process and the section 4(f) evaluation process.

The information within the proposed section 4(f) regulation has not changed in concept. However, new information has been added to bring the administration of section 4(f) evaluations up-to-date with FHWA and FTA programs such as Transportation Enhancements, Transit Enhancements, the Symms National Trail Program, etc. There has been little substantive change in the requirements of the section 4(f) regulation; rather the format of the information presented has been changed

<sup>1</sup> The FHWA and the FTA internal directives are available for inspection and copying as prescribed at 49 CFR part 7.

<sup>2</sup> Section 4(f) of the Department of Transportation Act, which protected certain public lands and all historic sites, technically was repealed in 1983 when it was codified without substantive change, as 49 U.S.C. 303. This regulation continues to refer to section 4(f) because it would create needless confusion to do otherwise; the policies section 4(f) engendered are widely referred to as "section 4(f)" matters. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions.

to reflect these program changes and proposed organizational changes.

The separation of the section 4(f) and NEPA procedures into separate regulations is not intended to fragment compliance with section 4(f) and NEPA. Our intent is to continue a fully integrated implementation under the unified and coordinated process provided by the NEPA procedures as an umbrella for addressing all relevant responsibilities, including section 4(f). Placing the two regulations in sequence within the Code of Federal Regulations, with cross references between them, is intended to communicate the continued integration of section 4(f) and the NEPA process.

#### *Right-of-Way Acquisition*

Section 1301 of the TEA-21 allows the value of land acquired by a State or local government without Federal assistance to be credited to the State share of a federally-assisted project which uses that land. However, the law stipulated that the land acquisition must not influence the environmental assessment of the project, including the need to construct the project, the consideration of alternatives, and the selection of a specific location.

The FHWA considered, under a separate rulemaking, covering "Right-of-Way Program Administration" published as a final rule in the December 21, 1999, *Federal Register*, an "early acquisition" policy to accommodate the acquisition of land or other property interests (including "at-risk" activities) by State or local agencies that may be deemed necessary while NEPA considerations are being concluded. These acquisitions would be considered "at-risk" in that the Federal reimbursement for a share of the acquisition costs would be forthcoming only if the acquired property is subsequently used in a federally-assisted project. Interested parties should refer to the December 21, 1999, final rulemaking (64 FR 71284-71297) in the *Federal Register*.

Advance right-of-way acquisition was the subject of considerable debate during the TEA-21 outreach efforts. Several commenters including the Capital Area MPO in Albany, NY, argued that the advance acquisition of right-of-way in rapidly growing areas is desirable, cost effective and good policy. These commenters view land acquisition as environmentally neutral, in that unused land can be disposed of, often at a profit. Others, including the National Coalition to Defend NEPA, noted the inherent conflict between allowing advance right-of-way acquisition and corridor preservation

initiatives, and the selection of a preferred alternative as part of the NEPA process. The National Coalition to Defend NEPA argues that purchase of land represents a commitment to a particular project location and that it, therefore, would influence the assessment of the project under NEPA.

#### *Design-Build Contracting*

Section 1307 of the TEA-21 permits a State or local transportation agency to award a design-build contract during project development provided that final design shall not commence before the NEPA process has been completed.

We have been concerned about design-build contracts (also called "turnkey" contracts) for federally-assisted projects being let before the NEPA process has been completed. To do so could give the appearance that the State or local transportation agency is fully committed to a single course of action, and that the NEPA process is simply a clearance exercise and not a true decisionmaking process. There may, however, be some situations in which design-build procurement can be structured to allow for the design-builders to work on an alternative emerging from the NEPA process. Our agencies recognize that the emerging interest in design-build contracting may warrant specific regulatory language or guidance addressing the relationship between design-build procurement and NEPA.

During the TEA-21 outreach efforts, some commenters suggested that design-build contracting provisions could include clauses that would preclude work on construction or the "building" of projects until after the NEPA Record of Decision<sup>3</sup> is made. The American Road and Transportation Builders Association (ARTBA) suggested that any work done on projects using this type of procurement method would be "at-risk" until the NEPA Record of Decision is announced, meaning that the work may have to be discarded if the NEPA process ultimately results in selection of an alternative project. In these cases, the State or local agency would not be eligible to receive Federal reimbursement until that time, and only if the action was consistent with the Record of Decision. The Virginia DOT suggested that design-build procurement awards should not be made until after the NEPA process had been concluded, at which point the

<sup>3</sup> NEPA Record of Decision is the documentation of final action by the FHWA and the FTA regarding their decision on a project action (final alternative chosen, impacts, mitigation and basis for decision, etc.) addressed in an Environmental Impact Statement.

specifics of the location and design decisions would be known. This approach has been used by the FTA in its Turnkey Demonstration Program. The Orange County Transportation Corridors Agency suggested that having a design-build agency on board at the earliest possible time is actually environmentally beneficial, since it can contribute valuable input in a timely way, to arrive at implementable and cost effective recommendations.

For highway projects, the FHWA's Office of Infrastructure is responsible for developing regulations which implement this TEA-21 provision. It is currently engaged in fact-finding and consultation among transportation partners including the American Association of State Highway and Transportation Officials (AASHTO), and anticipates beginning the formal rulemaking process next year. Achieving a balance between realizing the fullest time-savings potential of design-build contracting and maintaining the integrity of the NEPA process will be the subject of considerable discussion during that rulemaking process.

Our agencies intend to adopt consistent policies on the NEPA-related aspects of the design-build issue for two reasons: (1) Transit projects should not have procedural disadvantages in comparison to highway projects, and (2) Federal transit law (49 U.S.C. 5304(e)) requires that the FTA and the FHWA conform their NEPA processes to each other's.

#### **Section-by Section Analysis of the Proposed Rule on NEPA and Related Procedures for Transportation Decisionmaking**

This section of the notice of proposed rulemaking includes a section-by-section analysis of the proposed rule on NEPA and incorporates summary information on comments received on the Options Paper. All comments on the Options Paper are contained in the docket. The comments are, of necessity, summarized in each of the relevant sections of the proposed rule and are intended to provide an overall perspective on the comments submitted to the FHWA and the FTA. Details on specific comments and input can be obtained by reviewing the materials in the docket.

The proposed regulations have been reordered as to content and organized into the following four subparts:

- Subpart A—Purpose, Policy, and Mandate;
- Subpart B—Program and Project Streamlining;

**Subpart C—Process and Documentation Requirements; and Subpart D—Definitions.**

The following table highlights the reordering and organization for each proposed subpart:

Proposed Section	Current Section
Subpart A—Purpose, Policy, and Mandate .....	None.
1420.101 Purpose of this regulation .....	771.101 Purpose.
1420.103 Relationship of this regulation to the CEQ regulation and other guidance. ....	771.103 [Reserved]
1420.105 Applicability of this regulation .....	771.109(a) Applicability and responsibilities and 771.111(f) Early coordination, public involvement, and project development.
1420.107 Goals of the NEPA process .....	None.
1420.109 The NEPA umbrella .....	771.105 Policy.
1420.111 Environmental justice .....	771.105 Policy.
1420.113 Avoidance, minimization, mitigation, and enhancement responsibilities. ....	771.105 Policy.
Subpart B—Program and Project Streamlining .....	None.
1420.201 Relationship of planning and project development processes. ....	None.
1420.203 Environmental streamlining .....	None.
1420.205 Programmatic approvals .....	None.
1420.207 Quality assurance process .....	771.125 Final environmental impact statements.
1420.209 Alternate procedures .....	None.
1420.211 Use of this part by other U.S. DOT agencies .....	None.
1420.213 Emergency action procedures .....	771.131 Emergency action procedures.
Subpart C—Process and Documentation Requirements .....	None.
1420.301 Responsibilities of the participating parties .....	771.109 Applicability and responsibilities.
1420.303 Interagency coordination .....	771.111 Early coordination, public involvement, and project development.
1420.305 Public involvement .....	771.111 Early coordination, public involvement, and project development.
1420.307 Project development and timing of activities .....	771.111 Early coordination, public involvement, and project development, and 771.113 Timing of administration activities.
None .....	771.115 Classes of actions.
1420.309 Classes of actions .....	771.117 Categorical exclusion.
1420.311 Categorical exclusions .....	771.119 Environmental assessments.
1420.313 Environmental assessments .....	771.121 Findings of no significant impacts.
1420.315 Findings of no significant impacts .....	771.123 Draft environmental impact statements.
1420.317 Draft environmental impact statements .....	771.125 Final environmental impact statements.
1420.319 Final environmental impact statements .....	771.127 Record of decision.
1420.321 Record of decision .....	771.129 Re-evaluations.
1420.323 Re-evaluations .....	771.130 Supplemental environmental impact statements.
1420.325 Supplemental environmental impact statements .....	None.
Subpart D—Definitions .....	None.
1420.401 Terms defined elsewhere .....	None.
1420.403 Terms defined in this part .....	771.107 Definitions.

**Subpart A—Purpose, Policy and Mandate**

This proposed subpart sets out the framework for the FHWA/FTA NEPA process. It complements and supplements the United States Council on Environmental Quality (CEQ) provisions that serve a similar function for the entire Federal government.

**Section 1420.101 Purpose of This Regulation**

Current § 771.101 would be redesignated as § 1420.101 and revised to establish that the focus of the proposed regulation is to conduct a decisionmaking process for transportation projects that, under NEPA, integrates and streamlines compliance with all transportation and environmental laws applicable to decisionmaking during project

development. Reference is made to the regulations for transportation planning as being a contributing factor to this decisionmaking process.

**Section 1420.103 Relationship of This Regulation to the CEQ Regulation and Other Guidance**

The proposed § 1420.103 does not appear in the current regulation. It clarifies that this regulation is to be read as a supplement to the CEQ's governmentwide regulations for implementing NEPA (40 CFR parts 1500–1508) and contains specific provisions for Federal surface transportation actions under our jurisdiction. Further, the proposed section acknowledges that, in addition to issuing revised NEPA regulations, we will conduct and fulfill our responsibilities under NEPA using any

combination of approaches including, but not limited to, nonregulatory guidance, training, and technical assistance.

The CEQ regulations cover regulatory definition and general environmental procedural requirements (e.g., acceptable development and evaluation of an acceptable range of alternatives). These are not repeated in this proposed rule because we want to avoid confusion by repeating or paraphrasing CEQ requirements. Reproducing requirements in the FHWA and the FTA environmental regulations that are identical to CEQ requirements could create potential conflicts and confusion as to the applicability of CEQ provisions not reproduced. Instead, the chosen approach makes a discernible connection between the different regulations, and provides the

opportunity for general practitioners to increase their familiarity with and understanding of the CEQ regulations, a familiarity of which is essential to their ability to comply fully with all of the environmental requirements applicable to transportation projects.

#### *Section 1420.105 Applicability of This Regulation*

The proposed section revises current §§ 771.109 and 771.111, Applicability and responsibilities and Early coordination, public involvement, and project development, respectively. The language appearing in paragraph (a) of the proposed section is a shortened version of paragraph (a) of current § 771.109. Paragraph (b) in the proposed section is essentially the existing criteria for allowable segmentation of projects, taken from paragraph (f) of § 771.111.

#### *Section 1420.107 Goals of the NEPA Process*

Proposed section § 1420.107 is to be read in close conjunction with the subsequent proposed § 1420.109. Section 1420.107 would establish the goals of the FHWA/FTA transportation decisionmaking process. The goals are drawn from a variety of statutory mandates, including NEPA itself, and provisions of the various transportation laws that authorize our programs. The NEPA process is a partnership among Federal, State, and local governments and, at times, private entities. Our intent in this section is to establish a common understanding within the partnership of the goals to be achieved through the NEPA process.

The FHWA and the FTA reaffirm their role as lead Federal agencies, and underscore their responsibility to manage the NEPA process with the objective of achieving these goals. This responsibility extends to ensuring that Federal NEPA decisions pay appropriate deference to State and local decisions made in good faith and not coerce a particular Federal point of view. State and local decisions made with full consideration of a broad range of social, economic, and environmental factors, and with the advice of appropriate Federal and other State resource agencies (i.e., the agencies responsible under law for the protection or management of natural and community resources) and with public involvement are those most likely to advance the NEPA goals.

#### *Section 1420.109 The NEPA Umbrella*

Proposed § 1420.109 would replace portions of current § 771.105, Policy. The proposed section sets forth our basic policy regarding how the

decisionmaking process for surface transportation projects is to be conducted. The proposed section states the intent of our agencies to use the NEPA process as the overarching procedural construct under which the varied legal requirements, environmental issues, and public interests relevant to the transportation decision are brought to bear; hence the term "NEPA umbrella" is used to describe the concept. The consideration of a proposed action under NEPA concludes with a decision made in the best overall public interest: one that balances the need for safe and efficient transportation with the project's social, economic, environmental benefits and impacts, and the attainment of relevant environmental protection goals.

Experience in administering the NEPA process has shown that many practitioners do not fully understand or practice our approach of using the NEPA process as an umbrella for integrating their studies, reviews, or consultations and satisfying all relevant requirements in a single, integrated decisionmaking process. Instead, many have chosen to approach the various requirements as obstacles or hurdles to be addressed in a less than comprehensive fashion. Many delayed projects or failed processes can be traced back to a disintegrated and disconnected approach to meeting NEPA and other requirements. This section of the regulation is intended to clarify the preferred approach and explicitly demonstrate the multitude of factors that can influence Federal decisionmaking. Setting forth these expectations will contribute to a better, more efficient and timely NEPA process, one that is envisioned in the TEA-21 and highlighted in its section 1309 on environmental streamlining.

#### *Section 1420.111 Environmental Justice*

Subsequent to the previous regulatory revision in 1987, the 1994 Executive Order 12898 on Environmental Justice was issued to address disproportionately high and adverse human health and environmental effects of Federal government programs, policies, and activities on minority populations and low income populations. This section would be added to present regulatory language from our policy on environmental justice that is articulated in the DOT Order 5610.2 on Environmental Justice (62 FR 18377, April 15, 1997).

#### *Section 1420.113 Avoidance, Minimization, Mitigation, and Enhancement Responsibilities*

This section would present our policy regarding NEPA's mandate that Federal agencies, to the fullest extent possible, use all practicable means to restore and enhance, and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Our policy towards correcting adverse impacts is contained in the hierarchical but not necessarily sequential concepts of avoidance, minimization, and mitigation of impacts, and in the evaluation of environmental enhancements. The policy is consistent with the CEQ's approach to mitigation presented in 40 CFR 1500.2(f) and elsewhere, and would revise the language concerning mitigation of adverse impacts currently provided at § 771.105(d). The proposed language reflects also the broadened Federal funding eligibility for enhancement measures, such as transportation enhancement activities and transit enhancements, enacted with ISTEA and TEA-21. The section would address the eligibility for Federal funding (to the extent authorized by law), of measures to avoid, minimize, or mitigate impacts, or to provide or implement enhancements.

Our general responsibility for ensuring that mitigation is carried out would be presented in paragraph (d) of the proposed section, NEPA Commitments. These provisions would be redesignated from § 771.109(b) to streamline the subject matter of the new regulations; the original text would be revised to detail the responsibility for implementing mitigation measures and environmental enhancements that resulted from commitments made in the FHWA/FTA NEPA process.

#### *Subpart B—Program and Project Streamlining*

This subpart would group together a set of provisions aimed at improving the NEPA process, either on individual projects or on a programwide basis, so that transportation decisions can be made in a timely and environmentally sensitive manner. It would respond in part to the TEA-21 chapter on flexibility and streamlining, which addresses major investment study integration (section 1308) and contains the provisions on environmental streamlining (section 1309).

#### *Section 1420.201 Relation of Planning and Project Development Processes*

This section would clarify the relationship of the transportation



planning process and the project development process which is the subject of this NPRM. It reflects coordination with our concurrent proposed Metropolitan and Statewide Planning regulations; § 1420.318 of that proposed rule, and its preamble, provide further discussion of the relationship between the planning and project development processes. The section also stresses that the record of prior transportation planning activities, such as development of purpose and need and the systems-level evaluation of alternatives, shall be incorporated into the scoping or early coordination phases of an EIS or EA, respectively, in order to establish the alternatives to be advanced to the NEPA process.

Our agencies feel it is essential to clarify the nature of the linkage between planning and the NEPA process in this NPRM. The transportation planning process needs to be better coordinated with the project development/NEPA process so that transportation planning decisions can ultimately support the development of the individual projects which arise from transportation plans. During the TEA-21 outreach efforts, opinions varied over whether regulatory language or guidance should be used to integrate planning and programming activities, but most commenters agreed that the linkage between planning and project development needs to be cultivated. Many commenters, including the AASHTO and many State DOTs, opposed any regulatory language which would place requirements of NEPA into the planning process. Others, including the National Coalition to Defend NEPA, pointed to the need for the core values of the NEPA process to be incorporated into the planning process and suggested that regulatory language is in order.

The Options Paper discussed the notion that the establishment of purpose and need and the broad scale evaluation of alternatives can often be best accomplished during the planning process. How to frame the statement of purpose and need so that it is neither too narrow nor too broad is a continuing challenge. If too narrowly conceived, purpose and need can constrain the process with an unreasonably limited set of possible solutions; if too broadly constructed purpose and need may lead to an unmanageably large set of alternatives that unnecessarily bog down the process. Options to provide clearer direction regarding what constitutes an acceptable statement of purpose and need are being explored and we invite specific comments on this issue.

There was considerable support for allowing States and MPOs the option of

addressing purpose and need in the planning process, and even to initiate the NEPA process at that time. This would allow stakeholders to conduct broad ranging planning and subregional studies, reach agreement on purpose and need during the planning process, and benefit from such analyses by using them directly in the NEPA process. There was also strong support for establishing a point during the NEPA process at which the participants would discuss and concur in a statement of purpose and need.

However, a considerable number of commenters, including many State DOTs and MPOs, objected to any mandate for the determination of purpose and need during planning and argued that it would burden the planning process and add considerable delay by seeking a determination of need at an inappropriate juncture.

The Surface Transportation Policy Project (STPP) recommended a two-stage NEPA process where the first phase would evaluate the range of social, fiscal, and environmental costs and benefits of various alternative visions for a corridor or community. Based on this evaluation, an initial statement of purpose and need would be articulated. This purpose and need statement would be very broad, an articulation of the goals for the area already arrived at through the planning process, for example. The STPP proposed that a wide field of inquiry would be maintained at this stage. Subsequent to this phase of evaluation, and once a detailed review of options is complete, an agency would have the information necessary to propose a revised, more specific statement of purpose and need. It would be this revised statement of purpose and need that would serve as the basis for a detailed review of alternatives under NEPA. Under both phases, the choice of a project purpose would be subject to public input.

The Environmental Law and Policy Center argued for the allowance of lower-cost and lesser impact project alternatives to be selected through the NEPA process even if they do not fully meet the stated purpose and need. Both the U.S. EPA and the U.S. Department of Interior argued for broadly defined purpose and need during planning to ensure that a full range of modal alternatives are considered.

The National Coalition to Defend NEPA expressed concern over the development of purpose and need during planning. It felt this could prematurely preclude options and alternatives and argued that, until the DEIS is completed, insufficient

information is available with which to make such decisions. In short, it is concerned that defining purpose and need so early (in planning) could have the effect of "setting in stone" projects without adequate consideration of alternatives.

Commenters asked for examples, best practices and information on issues related to purpose and need determination, and there was general consensus that improvements in defining purpose and need are warranted. They felt that the difficulties articulated in the Options Paper relating to broad versus narrow statements of purpose and need are indeed real problems and that our agencies could provide useful guidance in this area.

We intend to provide continuity between the systems planning and project development processes so that the results of analysis performed during the planning stage, including project purpose and need, alternatives, public input, and environmental concerns are brought forward into project development. The proposed integration of the planning and project development process embodied in this regulation would enable a more broadly defined statement of purpose and need to be addressed at appropriate points in the integrated process.

There has also been much discussion of the standing given to planning decisions on alternatives to be advanced or dropped from consideration. The proposed regulation envisions an active discussion of this issue during scoping, with the involvement of the responsible planning agencies (i.e., the MPO and/or the State DOT). Ultimately, the U.S. DOT agency, in cooperation with the applicant, must decide the range of alternatives to be evaluated in detail in the NEPA document. The proposed regulation allows these agencies to recognize planning decisions made with adequate supporting documentation. Though the form and content of this support will not be specified in the regulation, we expect to see some or all of the following offered in this context: technical studies as envisioned by proposed § 1420.318(b), documentation of public reviews and comments, formal policy board resolutions in the case of MPO actions, or other supporting materials. For proposed major transit investments, this review will also decide whether the documented planning activities constitute the Alternatives Analysis required by 49 U.S.C. 5309(e) or, alternatively, if the requirement must still be satisfied in the NEPA process.

We propose to provide more detailed treatment on the subjects of purpose and

need, and the development, analysis, and evaluation of alternatives in the comprehensive package of informational materials. This would include how to address alternatives which in the past have been rejected for not fully meeting traditional concepts of purpose and need. Further, we plan to showcase examples of successful practices which demonstrate how effective integration of planning and project development can protect communities and environmental resources and save time in providing needed transportation improvements.

Examples of issues that might be covered include: the further consideration of alternatives that may not fully meeting traditional concepts of purpose and need; more broadly defined purpose and need statements during the planning stage so that a full range of modal alternatives are considered; an alternative analysis that examines non-construction alternatives that use transportation demand strategies; and flexibility to encourage the consideration of alternatives which may have lower than originally desired levels of transportation service if there are cost, time, and impact savings that justify the lower levels of transportation service.

We are soliciting comments on a suggestion that specifically addressing the requirements of the major investment study in the planning process would enhance that process by forging a clearer link between the planning and the project-level NEPA processes, leading to greater streamlining at the project level.

#### *Section 1420.203 Environmental Streamlining*

This new section would be added to reflect the requirements of section 1309 of the TEA-21. The basic premise of section 1309 of the TEA-21 was to address concerns relating to delays, unnecessary duplication of efforts and costs associated with the development of highway and transit projects. Section 1309 also stipulates that nothing in section 1309 shall affect the applicability of NEPA or any other federal environmental statute or affect the responsibility of any federal offices to comply with or enforce such statutes. The rule responds to the TEA-21 environmental streamlining provisions by establishing a process intended to coordinate Federal agency involvement in major highway and transit projects with the goals of identifying decision points and potential conflicts as early as possible, integrating the NEPA process as early as possible, encouraging the full and early participation of all relevant agencies, and establishing coordinated

time schedules for agencies to act on a project.

This proposed section of the regulation establishes the "coordinated environmental review process" which section 1309 of the TEA-21 directed the Secretary of Transportation to develop and implement. Paragraph (a) lays out the elements of this coordinated environmental review process, providing a substantive but flexible set of actions to be taken by the U.S. DOT in cooperation with the applicant to ensure that the goals of section 1309 are met. An important element of this coordinated environmental review process is reaching closure among the Federal agencies on the scoping process. This paragraph calls for agency concurrence at the end of scoping, which could take various forms depending upon the mutual understandings and agreements of the Federal agencies. In the event of nonconcurrence, this paragraph provides also for means to resolve interagency disagreements at the earliest possible time. Paragraph (b) describes the process for applying the coordinated environmental review process to State level environmental reviews. Paragraph (c) would implement the provisions of the statute which allow the Secretary to decide not to apply section 1309 to the preparation of an environmental assessment. Paragraph (d) would implement the CEQ NEPA regulation provisions on paperwork reduction and clarifies that the NEPA documentation need not explicitly contain a finding that a particular impact does not exist. For example, if the environmental inventory revealed that there were no wetlands in the project area, a specific finding indicating that the project would have no impacts on wetlands would not be required. This provision would help to focus NEPA documents on important issues in accordance with the CEQ NEPA regulations' provision on paperwork reduction.

One consistent theme that emerged through the outreach process pointed to the need for early and up-front involvement of Federal agencies in the NEPA process and for close coordination and cooperation among the Federal agencies throughout the process. The State DOTs, the MPOs, the National Association of County Engineers, the U.S. EPA, and the U.S. Department of Interior all felt that Federal agency involvement is critical to successful implementation of the environmental streamlining provisions. They also recommend that our field offices and the resource agencies' field offices throughout the country have the authority to participate in, review, and

respond to issues associated with the NEPA process.

Inasmuch as stakeholder sentiments echoed a need for early collaboration and close coordination with all interested and affected parties, they also strongly reinforced the need for flexibility at the State and local levels for implementing the goals of streamlining. A "one-size-fits-all" regulatory approach was soundly rejected by an overwhelming majority of stakeholders, other Federal agencies, practitioners, project sponsors, and field offices.

We believe that successful implementation of environmental streamlining must be based upon a number of principles, and are pursuing a process that will ensure effective environmental decisionmaking in a timely manner. Both transportation and resource agencies must improve their environmental review processes. The U.S. DOT will provide national leadership on environmental streamlining, and is working with CEQ and headquarters offices of the EPA, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. National Park Service, the U.S. National Oceanic and Atmospheric Administration, the Advisory Council on Historic Preservation and others to obtain commitments to better decisionmaking. The framework for this commitment to the environment and to streamlining the environmental process is set forth in the national Memorandum of Understanding (MOU) which was entered into by the aforementioned agencies in July 1999.<sup>4</sup> We fully expect to track the commitments reflected in the national MOU. We recognize that tangible progress will evolve locally, and State by State, at different rates, based largely on good working relationships and trust established among the agencies at the field office level.

We are proposing to implement the environmental streamlining requirements largely outside of the regulatory process through the following means: (1) U.S. DOT memoranda of understanding with Federal or State agencies; (2) establishment of dispute resolution processes; (3) streamlining pilot efforts; (4) authorization of the U.S. DOT to approve State DOT or transit agency requests to reimburse Federal agencies for expenses associated with meeting expedited time frames; and (5) establishing performance measures to evaluate and measure success in both

<sup>4</sup> This Memorandum of Understanding is available electronically from FHWA's website at <http://www.fhwa.dot.gov/environment/streaming.htm>.



environmental stewardship and environmental streamlining. We have established an environmental streamlining page on the FHWA website to keep the public up to date on our ongoing activities and resources (<http://www.fhwa.dot.gov/environment/streaming.htm>). We are also providing a detailed description of our work to date on the following:

#### (1) National MOU

The central effort on the national MOU has been to craft an agreement among agencies which demonstrates a commitment to key principles and upon which further agreements can be executed at a local or regional level to address more specific issues. Establishing and maintaining clear and frank communication has been at the heart of the national MOU and would be the primary guide to further interagency agreements.

The process of developing the national MOU was aimed chiefly at responding to the concerns regarding early and up-front involvement of Federal agencies in the NEPA process and for close coordination and cooperation between Federal agencies throughout the process. We are working with representatives of other Federal agencies at the headquarters and field levels to develop a common understanding of the environmental streamlining provision and a coordinated implementation strategy. The development of the national MOU has followed the suggestion of AASHTO, Association of Metropolitan Planning Organizations (AMPO), and many State DOTs that the MOU include broad principles of agreement on how the NEPA process would be carried out but that project-specific or program-specific MOU's need to be developed at the State, regional, or local level, based upon these broad principles, and tailored to specific local circumstances or projects.

#### (2) Dispute Resolution Procedures

Procedures for resolving conflict at the national, regional, and State levels are under development. Mediation methods and systems for alternative dispute resolution are being developed and training programs in these methods will be established. This approach will enable parties to seek timely intervention over disputes during the project development process, as a way to circumvent and minimize the number of environmentally unacceptable projects that may otherwise be referred to CEQ for resolution, by either reestablishing consensus on the need for the project or reaching consensus to

drop the project entirely. Alternative dispute resolution strategies will be defined so that they can be effectively applied to improve institutional relationships among parties or to resolve conflicts surrounding specific project issues.

On the matter of dispute resolution procedures, commenters made three key points. They felt that explicit time frames for document reviews are needed and should be agreed to, to the fullest extent possible, up-front in the process. Secondly, they supported an approach where the parties to the MOU agree, at an early stage, on the level of information and detail that is needed at various steps in the NEPA process. Resource agencies expressed frustration with the timing and level of detail of information that they are asked to consider and act upon, and State and local implementing agencies expressed frustration due to uncertainties over what specific information and level of detail would be required of them by the Federal resource, regulatory and permitting agencies. A third point made by many stakeholders was that procedures on coordination, documentation, and communications should be agreed to as early as possible. They felt that this would help to resolve differences that arise at various points in the process and which can contribute to delays.

#### (3) Pilot Efforts Are One Effective Mechanism for Testing and Evaluating Change

One specific topic suggested for pilot projects was from the North Carolina DOT and the American Road and Transportation Builders Association, which suggested the testing of alternative approaches to gaining interagency cooperation during the NEPA process. The Virginia DOT suggested that pilot project efforts should be directed at finding ways to resolve differences between Federal agencies. A third suggestion was that pilot projects should test approaches to providing States flexibility in carrying out the NEPA process.

Not all commenters supported the concept of pilot projects, however, and the National Coalition to Defend NEPA questions the legal authority of our agencies to conduct pilot projects and cautioned against using pilot projects to "back-door" the NEPA process. It was also concerned that pilot efforts not only involve partnership development between Federal and non-Federal partners and resource permitting agencies, but also include groups representing the public as well.

Based on the input received on the issue of pilot efforts, we are not proposing to establish a formal process for pilots at this time, through regulation or any other means. Instead, we will participate in pilot efforts on a case-by-case basis. These pilot efforts might be focused on a single project or on improving a particular process, but would not include the delegation of Federal NEPA responsibilities to States that was considered but not enacted in the TEA-21. We will continue to coordinate closely with the U.S. EPA, the AASHTO and others who are developing pilot efforts, and will actively assist in sharing information on efforts including lessons learned.

#### (4) Use of Titles 23 and 49, U.S.C., Funds To Pay for Environmental Agency Work

The agency reimbursement language in the environmental streamlining provisions of the TEA-21 offers an opportunity to partially overcome an historic obstacle, that Federal agencies cannot involve themselves in the process early enough or regularly enough due to resource constraints within agencies. The TEA-21 includes specific conditions allowing States and transit agencies to use Federal transportation funds for reimbursement of expenses related to work done to meet the expedited time schedules required by section 1309 of the TEA-21. In addition, other statutory authorities exist for agency reimbursement, and we are exploring the full range of options for reimbursing agencies through any of the available authorities. Furthermore, approaches to developing collaborative efforts with other Federal agencies are being explored in order to develop model reimbursement agreements, and to facilitate the implementation of such agreements by Federal agency field staff.

Due to the need for flexibility and the different practices and needs of various State and resource agencies, it was determined that nonregulatory guidance would most appropriately address the use of Federal transportation funds for reimbursing costs associated with streamlining. Hence, we engaged participation by many other affected Federal agencies to develop a single guidance package that would be useful to transportation and environmental agencies, including State DOT's and transit agencies and Federal, State, and local resource agencies. The breadth of situations that might be addressed under this provision was such that the guidance does not try to anticipate them all. Rather, it reinforces the Federal government's belief in effective interagency coordination and

demonstrates a commitment from Headquarters offices to support field efforts in implementing this provision of the TEA-21.

There were a number of comments on this TEA-21 provision and a suggestion from the American Road and Transportation Builders Association that the principles to apply to reimbursement should include a provision that reimbursement for Federal agency activities to expedite NEPA reviews must be linked to a specific project, set of tasks, and person or position to be involved on behalf of the Federal agency. Others, including the Nevada and Missouri DOTs, felt that reimbursing an agency for working on one project over another is not a good approach. Reimbursing agencies for doing their jobs, it was argued, would introduce a bias into the NEPA process which would result in an expedited review or enhanced level of participation on some projects over others.

#### (5) Performance Measures

Our agencies have a joint effort underway to evaluate the timeliness and the effectiveness of the NEPA process at arriving at decisions that are in the best overall public interest. Further information on this effort can be obtained from the FHWA.

#### *Section 1420.205 Programmatic Approvals*

Section 1420.205 would be added to establish in regulation the FHWA/FTA practice of using programmatic environmental approvals as one way of addressing recurring situations in a streamlined manner.

This practice has been especially effective with categorical exclusions for meeting the NEPA requirements in uncomplicated and non-controversial situations. One example of this are programmatic categorical exclusion approvals in which FHWA and a State DOT established a set of environmental impact thresholds, which, if not exceeded, allow the State DOT to apply the categorical exclusion approval without a project specific review by FHWA. Periodically, the FHWA reviews a sample of projects after-the-fact to ensure that the approval was appropriately applied. Other examples of programmatic approvals include section 4(f) approvals for minor uses of parkland and approval to delegate certain USDOT responsibilities under the recently issued regulations implementing section 106 of the National Historic Preservation Act. The proposed section explicitly recognizes the appropriateness of programmatic

approaches for compliance with NEPA and related statutes, but does not specify the types of actions for which programmatic approaches would be created. Programmatic approaches to meeting the NEPA requirements which would not directly involve project level Federal approvals would be subject to periodic process reviews to ensure that they are being properly applied. This would enable the Federal agencies to focus limited resources on more problematic project-level decisions and to maintain a quality assurance role for projects with beneficial or de minimis environmental impacts. There was general support for such an approach in comments on the Options Paper. We invite comments on public notice and interagency coordination processes appropriate for making programmatic approvals.

#### *Section 1420.207 Quality Assurance Process*

This new proposed section would establish an internal responsibility for our agencies to employ appropriate quality management methods to assure that the NEPA responsibilities are carried out in a competent and timely manner. Such a process is intended to streamline the process by institutionalizing lessons learned throughout the administration of our programs and NEPA so that mistakes are not repeated and innovative approaches are fully implemented.

The requirements in the current regulation for legal sufficiency review of Final Environmental Impact Statements (FEIS) and prior concurrence of the Headquarters on certain FEISs would be incorporated into this proposed section. These processes have proven helpful in assuring the quality of analysis, coordination, and documentation and can prevent costly and timely lawsuits and conflicts. As proposed, the nature of legal sufficiency review and the threshold for requiring prior concurrence at Headquarters would not be specified in regulation, but would be the subject of internal orders.

#### *Section 1420.209 Alternate Procedures*

This new section would be added to establish the procedures for processing and approving alternate procedures for complying with this regulation. This would give us the flexibility to partner with CEQ and State DOTs or transit agencies on NEPA reinvention efforts that achieve the goals of the NEPA process by using alternate methods or procedures that are more in tune with and supportive of non-Federal decisionmaking requirements.

#### *Section 1420.211 Use of This Part by Other U.S. DOT Agencies*

In 1993, the U.S. DOT National Performance Review effort recommended that the NEPA procedures of the various modes be blended into a single process. Efforts to accomplish this unified procedure were purposely delayed until after passage of the surface transportation reauthorization which became TEA-21. Recent discussions within the U.S. DOT are now pointing toward a dual effort, one element of which would cover the entire department, the other of which is this proposed regulation covering just the FHWA and the FTA. To advance the first element, U.S. DOT would revise the U.S. DOT Order on NEPA to update the departmentwide statement of environmental policy and to remove barriers to collaboration between the U.S. DOT modes on NEPA issues. It would provide authority for one U.S. DOT agency to use the NEPA procedures of another U.S. DOT agency or to act as the agent for another U.S. DOT agency when a situation warrants. This proposed section clarifies in regulation that the internal order is considered legally sufficient to provide these authorities. The further action at the departmental level to amend the U.S. DOT Order on NEPA is under development.

Most Options Paper commenters, including State DOTs, MPOs, associations, and authorities supported a coordinated approach to NEPA within the U.S. DOT and its modal administrations. There was strong support for the elimination of differences in how the FHWA and the FTA manage the NEPA process and for a consolidation of these approaches in the updated regulation. In addition, there was strong support from New York DOT, the American Road and Transportation Builders Association and others for the elimination of provisions duplicating the CEQ regulations, which many thought would lead to a streamlined regulation. Finally, many commenters supported the notion of the FHWA and the FTA having strong oversight over the NEPA process. Equally important, commenters noted, is that there be a true partnership between Federal agencies and State and local agencies.

#### *Section 1420.213 Emergency Action Procedures*

This proposed section would contain the provision currently found at 23 CFR 771.131.

### Subpart C—Process and Documentation Requirements

This proposed subpart describes the requirements of carrying out the NEPA process, including establishing the roles of various governmental agencies and the public in the process, determining the appropriate level of environmental documentation under NEPA, and laying out the procedural requirements for processing NEPA documents. It complements and supplements the CEQ regulations that provide the general NEPA framework for the entire Federal government. In addition to the regulatory requirements described in this subpart, the FHWA's and FTA's comprehensive package of informational materials will provide detailed nonregulatory approaches to many of the subjects herein.

#### *Section 1420.301 Responsibilities of the Participating Parties*

This is a new section that addresses some of the items currently contained within § 771.109. Paragraph (a) of the proposed section utilizes the current CEQ regulations (40 CFR 1500–1508) to define terms and set forth concepts, such as: Lead and cooperating agencies; the relationship between Federal agencies, applicants, and contractors; and enhancing the efficiency of the NEPA process through cooperation between Federal, State, and local agencies.

Paragraph (b) would clarify in regulation current practice for administering the NEPA process for projects implemented directly by the Federal government on Federal lands. Namely, it is a shared responsibility of the U.S. DOT and the Federal land management agency. The precise nature of the responsibility is specified in agreements or standard operating procedures.

In the previous regulations, the provision in 23 CFR 771.109(c) on agency responsibilities is largely repetitive of what is also found in CEQ's regulations on NEPA. For this rulemaking effort, we are reluctant to propose regulatory language which simply restates existing sections of another regulation, and would streamline this section accordingly. Paragraph (c) of the proposed section addresses the use of contractors in the NEPA process for contracting for environmental and engineering services. The proposed rule allows a State to procure the services of a consultant, under a single contract, for environmental impact assessment and for subsequent post-NEPA engineering and design work in accordance with the

provisions of 23 U.S.C. 112(g), as amended by the TEA–21.

Section 1205 of the TEA–21 allows a State to procure under a single contract, the services of a consultant to prepare environmental documents for a project, and to perform subsequent final engineering and design work on the project. This would only occur if the State conducted a review assessing the objectivity of the environmental documentation. Experience has shown that, although on many projects consultants do prepare the bulk of the detailed analyses and NEPA documentation, this process involves close oversight by the State or local public agency and by the lead Federal agency. It is the ongoing responsibility of our agencies to ensure that all consultant work reflected in the NEPA process and documentation meets appropriate standards of objectivity and professionalism.

The contracting provisions were included in the TEA–21 to clarify our agencies' positions on the use of contractors for environmental and engineering design work for Federal transportation projects, and were chiefly aimed at addressing concerns of potential conflict of interest on the part of the consultants.

The U.S. DOT believes that more detailed nonregulatory guidance will best address the specifics of disclosure statements, other requirements of 40 CFR 1505.5(c), and the requirement for a review of the objectivity of the environmental document.

Generally speaking, commenters on the Options Paper felt that current level of oversight and review is sufficient, and that additional documentation to ensure objectivity is unnecessary. The EPA suggested the need for the development of Federal procedures for monitoring, investigating, and resolving conflicts that might result from this TEA–21 provision.

#### *Section 1420.303 Interagency Coordination*

The proposed section would revise the current § 771.111 (a) through (e). The proposed section would simplify the current section by focusing on key terms and concepts that are the basis of an integrated decisionmaking process conducted under the NEPA umbrella. For example, the proposed section features the term "interagency coordination" to supplement the current "early coordination" in order to better express the collaborative intent of the FHWA/FTA NEPA process. The proposed section provides an explanation of the role and function of interagency coordination in the NEPA

process. The term "interested agencies" would be added. The proposed section briefly outlines a procedure for notifying affected Federal, State, and local entities of the availability of approved documents for classes of action other than an EIS.

Scoping and early coordination can set the tone, positive or negative, for subsequent project development activities. Experience has shown that many of the conflicts which delay Federal approvals of highway and transit projects are somewhat predictable, and might be better anticipated and managed by using the scoping process as an early warning system. In addition, the development of interest-based negotiating and collaborative problem solving skills can help to craft implementable solutions. Two possible solutions emerged through the outreach process that could assist Federal agencies and applicants in performing more effective project scoping. One approach to the scoping of complex projects is that agencies agree on review schedules, but only after sufficient information on issues has emerged to allow them to gauge the required level of effort for their respective agencies. Another approach might make the scoping process, as part of an aggressive, high visibility project management role by our agencies as the lead Federal agency(ies), a mechanism for identifying the issues, and agreeing on roles, time frames and methodologies associated with advancing the project, and possibly memorializing that agreement in a project MOU.

Both program reviews and feedback from stakeholders indicate that the FHWA and the FTA need to take a stronger leadership role in the NEPA process. Commenters including the National Coalition to Defend NEPA, the AASHTO, the American Road and Transportation Builders Association, and others reinforced this point in their comments on the Options Paper. These groups said that the FHWA and the FTA staff should attend meetings and serve as conflict resolution agents and mediators between other agencies. Also, they told us that we should provide information, such as, handbooks, best practices on scoping, and training for practitioners. As was the case in many areas, stakeholders including MPOs, State DOTs and others feel that much progress can be made in better integrating environmental and other considerations into the planning process through training, examples of where new approaches are working, handbooks and other useful materials.

Many of the detailed considerations of the scoping process are outside the

scope of this proposed rule, and will be addressed separately. Effective project scoping and interagency coordination is a chief topic of our environmental streamlining efforts, and will be given more detailed treatment in the comprehensive package of informational materials to be issued in conjunction with the final rule. Scoping may also be the subject of further guidance on its own. We will make full use of input received through the outreach efforts, as well as through our ongoing coordination with transportation and environmental agencies, in the development of this additional guidance.

#### *Section 1420.305 Public Involvement*

Current § 771.111(h) would be redesignated as § 1420.305. It remains relatively unchanged for State DOTs except that the separate requirements specific to the FHWA and the FTA programs would be deleted; and new references specific to public involvement procedures, notification requirements, and accommodations for those with disabilities would be added. A requirement would be added to specifically ascertain if public involvement is warranted whenever a reevaluation is being conducted. Also a minimum 45-day public comment period would be established whenever public involvement procedures are initially adopted or revised.

The proposed rule also aims to consolidate requirements of our two agencies for public involvement so that the U.S. DOT can offer a more consistent approach on this subject. Based upon comments to the Options Paper, there was resounding support for a consistent approach to public involvement requirements between the FHWA and the FTA and this was cited by the National Coalition to Defend NEPA as one way to make the planning process more accessible and understandable to the public. This consolidation may mean that some transit agencies may have to formalize their public involvement procedures through board adoption, or revise their procedures to ensure their applicability to the NEPA process. The FTA does not expect to find many transit agencies without existing adopted procedures applicable to project development, but invites comment on this concern. We recognize the importance of public involvement to informed decisionmaking, and have issued a number of publications which provide nonregulatory guidance on how to increase the effectiveness of applicants' public involvement efforts.

The new § 1420.305(d) recognizes the need for public involvement on certain re-evaluations where the elapsed time may have altered public expectations.

#### *Section 1420.307 Project Development and Timing of Activities*

Current § 771.113 would be redesignated as § 1420.307 and revised. The proposed section would clarify the circumstances in which the FHWA/FTA would not approve initiation and funding for certain activities, such as, final design activities. The proposed section would encourage compliance with the requirements of all applicable environmental laws, regulations, executive orders, and other related requirements be demonstrated prior to approval of the final environmental documents or categorical exclusion (CE) designation. Conditions under which agencies responsible for metropolitan and statewide planning would be notified in order to satisfy the planning and programming requirements of proposed 23 CFR part 1410 would be identified.

However, under the NPRM the FHWA and the FTA would not prevent State and local governments and private entities from taking certain actions that are "at risk" of being rendered useless by the final NEPA decision. Such actions include final design or land acquisition prior to NEPA approval, but do not include those that would have an adverse impact, such as, demolition or construction. The FHWA and the FTA would view at risk activities that actually substantially harm environment as so subverting the NEPA process that we would inform applicants that the action would be ineligible for FHWA or FTA financial assistance. The FHWA and the FTA would not finance such "at risk" actions, and would not allow their decisions to be influenced by the actions taken by others. For projects that will be federally-funded, the present regulation prohibits final design and land acquisition (with certain limited exceptions) prior to the completion of the NEPA process. The enforcement of this prohibition has been confounded by the fact that specific funding sources, especially for smaller projects, are often not identified until late in project development. Hence, the applicability of the Federal requirements that attach only to Federal funding sources is not yet determined at the time the "at risk" activities are initiated.

We are considering issuing guidance on how to handle such situations, especially in terms of disclosure responsibilities.

We propose to clarify that full compliance with the transportation

conformity rule (40 CFR parts 51 and 93) is required prior to the approval of the final EIS, FONSI or CE<sup>5</sup> designation. As a result, this proposal would allow preliminary engineering for project development activities to be done prior to final NEPA approval without having to meet conformity requirements. We request public comment on our proposed clarification.

We believe that this proposed change is allowed under current regulations. While the conformity rule requires that a project come from a conforming plan and transportation improvement program (TIP) before final NEPA approval, the rule does not explicitly specify that the project must be in a conforming plan and TIP in order to initiate the NEPA process. In fact, 40 CFR 93.126, table 2, identifies as exempt, "engineering to assess social, economic, and environmental effects of the proposed alternatives to that action." We feel that this is an important distinction that may help to improve the quality of the NEPA process leading to more effective, efficient, and environmentally sound judgments, without compromising the planning process and air quality analysis.

We believe that the emissions impacts of the project should be considered as early as possible and continue to encourage the inclusion of projects in the plan and TIP conformity analysis as early as feasible prior to the completion of the NEPA process where it is feasible. Earlier inclusion of the project in the plan and TIP is beneficial for the overall development of the plan and TIP because regional analysis is used as a long term indicator of the area's emissions impacts and associated problems. Early analysis of projects in the plan and TIP allows a more comprehensive long term assessment of how emissions impacts can be minimized, whether through changes in the timing of projects or changes to the composition of the plan and TIP.

However, a major problem with this approach is that it is counterproductive to corridor planning, prejudices alternatives and can limit thorough exploration of all feasible alternatives throughout the project development process. It can be counterproductive to, rather than supportive of, good long term transportation systems planning in certain circumstances. The reason for this is that in order for a project to be included in the regional plan and TIP and regional analysis prior to

<sup>5</sup> Environmental Impact Statement (EIS), Finding of No Significant Impact (FONSI), categorical exclusion (CE).

completion of NEPA, certain assumptions must be made about the project and related emissions impacts. It is difficult to define project design concept and scope that early in the planning process, especially for those projects requiring the highest level of environmental review and scrutiny. When taking complex projects through the project development process, it is very difficult to simply define two points of connection to the network, the number of lanes and facility type (that which is needed for regional analysis). Complex projects and corridor projects often examine multimodal options, some of which are not fully developed until later in the NEPA process. Under this scenario, the assumptions for regional analysis for conformity purposes may encourage an overly narrow alternatives analysis and constrain the environmental review process. We request comment on whether similar experiences have occurred in practice when accounting for preliminary engineering for project development in regional conformity analyses.

It is important to note that, under this proposal, preliminary development of new projects could proceed during a conformity lapse, since such activities would not need to meet conformity requirements. However, final NEPA documents on new projects could not be approved under this proposal until a new conforming plan and TIP are in place.

We believe the frequency requirements for conformity are sufficient to ensure that full emissions impacts of the projects are accounted for before projects move into the final design; therefore, long term risks are minimal and the projects must be included in the regional conformity emissions analysis prior to the completion of NEPA. The regional emissions analysis and conformity determinations can be made as frequently as once a year, but at a minimum at least every three years; therefore, it is reasonable to allow environmental reviews and the NEPA process to be initiated without the project being included in the conformity analysis.

#### *Section 1420.309 Classes of Actions*

Current § 771.115 would be redesignated as § 1420.309 and the text would remain the same, except for the addition of certain intercity railroad and intermodal actions.

#### *Section 1420.311 Categorical Exclusions*

The proposed § 1420.311 would make several changes from the list of CEs in the current § 771.117 to reflect changes in the FHWA and the FTA programs since 1987. Modal limitations would be eliminated wherever possible. In addition, the CEs would be reordered and regrouped so that similar actions are listed together. The CEs would continue to be organized into two major groupings: those in paragraph (c) that require no further U.S. DOT agency approval, and those in paragraph (d) that require a written demonstration that the CE is appropriate. Paragraph (c) would clarify the need for NEPA approval by the U.S. DOT agency for listed CEs to which other environmental laws (e.g., section 106 of the National Historic Preservation Act) apply.

The proposed changes in CEs in paragraph (c) would be as follows:

Paragraph (c)(1) (non-construction activities) would incorporate the text of current § 771.117(c)(1), (c)(20), and part of (c)(16) without substantive change. It would add designations to the National Highway System to the list.

Paragraph (c)(2) (resurfacing) would move part of the text of current § 771.117(d)(1) to paragraph (c). Experience has shown that simple resurfacing of an existing pavement does not require additional written information for a CE determination.

Paragraph (c)(3) (routine maintenance) is not explicitly covered in the current § 771.117, but it is an important program activity, especially for transit with the re-definition of preventive maintenance as a capital expense.

Paragraph (c)(4) (ITS elements) is not explicitly covered in the text of current § 771.117. Installation of isolated ITS elements is proposed for paragraph (c), but an areawide coordination of multiple ITS elements that would have greater impact on the transportation system is proposed for paragraph (d)(2).

Paragraph (c)(5) (safety programs) would incorporate the text of current § 771.117(c)(4) and would add a current CE of the Federal Railroad Administration related to safety.

Paragraph (c)(6) (support facility improvements) would incorporate the current § 771.117(c)(12), but would extend it to cover toll facilities, control centers, and vehicle test centers, facilities that are similar in size and activity to those in the current CE.

Paragraph (c)(7) (carpool programs) uses a defined term to incorporate the text of current § 771.117(c)(13) except that carpool activities requiring land

acquisition and construction (such as new parking lots) would be excluded and covered in paragraph (d)(6).

Paragraph (c)(8) (emergency repairs) would incorporate the text of current § 771.117(c)(9), but extends it to cover modes other than highways.

Paragraph (c)(9) (operating assistance) would incorporate the second part of the text of current § 771.117(c)(16) without substantive change.

Paragraph (c)(10) (vehicle acquisition) would incorporate the text of current § 771.117(c)(17) without substantive change.

Paragraph (c)(11) (purchase and lease of equipment) would incorporate the text of current § 771.117(c)(19), but would extend it to cover leases and the capital cost of contracting for transit services.

Paragraph (c)(12) (vehicle rehabilitation) would incorporate the current § 771.117(c)(14), but would extend it to cover conversions to alternative fuels.

Paragraph (c)(13) (track maintenance) would incorporate the text of current § 771.117(c)(18), but would extend it to cover wayside systems in addition to tracks and railbeds.

Paragraph (c)(14) (bicycle-pedestrian facilities) would incorporate the text of current § 771.117(c)(3) except that bicycle and pedestrian projects requiring land acquisition and construction (such as bike paths on new right-of-way) would be excluded and covered in paragraph (d)(19).

Paragraph (c)(15) (ADA accessibility) would incorporate the text of current § 771.117(c)(15) without substantive change.

Paragraph (c)(16) (signing, etc.) would incorporate the text of current § 771.117(c)(8) without substantive change.

Paragraph (c)(17) (property management) would incorporate the text of current § 771.117(c)(2), (5), and (11), and similar property management activities under the transit program. In addition, disposal of excess property would be moved from § 771.117(d)(6) because experience has shown that the sale or transfer of property does not have significant impact in and of itself, and the U.S. DOT agency does not have the statutory authority to control the subsequent use of property after it has been sold by the applicant.

Paragraph (c)(18) (transportation enhancements) would incorporate the text of current § 771.117(c)(7) and (10), and would add other transportation enhancement activities and transit enhancements to the list.



Paragraph (c)(19) (noise walls) would incorporate the current § 771.117(c)(6) without substantive change.

Paragraph (c)(20) (mitigation banking) would be added due to the transportation enhancement provisions and changes in the mitigation policies of Federal resource agencies that allow or encourage this form of mitigation.

The proposed changes in CEs in paragraph (d) would be as follows:

Paragraph (d)(1) (highway rehabilitation) would incorporate the text of current § 771.117(d)(1) except that simple resurfacing is now proposed to be moved to paragraph (c) and would not require a written CE demonstration.

Paragraph (d)(2) (operational improvements) would incorporate part of the text of current § 771.117(d)(2), with clarification through examples of the ITS systems that would be covered.

Paragraph (d)(3) (safety improvements) would incorporate parts of the text of current § 771.117(d)(2) and (3) without substantive change. It would add safety-related programs of recent importance including seismic retrofit and mitigation of wildlife hazards.

Paragraph (d)(4) (bridge rehabilitation) would incorporate part of the text of current § 771.117(d)(3) with the clarification that the approaches to the bridge or tunnel would also be included in the project and that historic bridges and bridges providing access to ecologically sensitive areas are excluded.

Paragraph (d)(5) (bridge replacement) would incorporate the remaining part of the text of current § 771.117(d)(3). If applicable, "section 106" (National Historic Preservation Act (16 U.S.C. 470 *et seq.*)), "4(f)" (49 U.S.C. 303), "section 404" (Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 to 1376)) and coastal zone management issues must be addressed in the CE documentation and coordinated with the other agencies in accordance with those statutes.

Paragraph (d)(6) (parking facilities) would incorporate activities from the current § 771.117(c)(13) and (d)(4), but would apply to all parking facilities, not just those on transportation fringes, if the CE conditions are met.

Paragraph (d)(7) (new operations centers) would be added as a CE primarily covering the construction of buildings to house the control centers from which ITS systems are operated and managed.

Paragraph (d)(8) (support facility construction) would incorporate the text of current § 771.117(d)(5) with the addition of other similarly sized support facilities.

Paragraph (d)(9) (access control) would incorporate the text of current § 771.117(d)(7) without substantive change.

Paragraph (d)(10) (track improvements) would incorporate the text of current § 771.117(c)(18) in situations where land acquisition is needed.

Paragraph (d)(11) (storage yards and shops) would incorporate the text of current § 771.117(d)(8) and (11) without substantive change.

Paragraph (d)(12) (building renovation) would incorporate the text of current § 771.117(d)(9) without substantive change.

Paragraph (d)(13) (transfer facilities) would incorporate the text of current § 771.117(d)(10) without substantive change.

Paragraph (d)(14) (ferry facilities) would be added as an explicit statement that work on existing ferry facilities may be a CE, but concern for water-related impacts necessitates its inclusion in paragraph (d) so that a written CE demonstration must be provided.

Paragraph (d)(15) (rail service demonstrations) would be added as a CE, based on our experience with previous similar cases. If the service demonstration were to lead to proposal for permanent service involving Federal financial support, that permanent project would be separately evaluated for its impacts.

Paragraph (d)(16) (advance land acquisition) would have three parts to it as follows:

(1) Paragraph (d)(16)(i) would allow the acquisition primarily of underutilized private railroad rights-of-way (ROW). It reflects current FTA practice where present or recent rail operations on the ROW ensure that adjacent land uses remain generally compatible with the continued transportation use of the ROW;

(2) Paragraph (d)(16)(ii) would respond to the provisions of the TEA-21 section 1301 without attempting to elaborate on those provisions. Such elaboration would be covered in separate guidance on the issue of advance land acquisition; and,

(3) Paragraph (d)(16)(iii) would incorporate the text of current § 771.117(d)(12) covering hardship and protective acquisitions, without substantive change.

Paragraph (d)(17) (joint development) would incorporate part of the text of current § 771.117(d)(6) without substantive change.

Paragraph (d)(18) (bicycle facilities) would incorporate activities covered in the text of current § 771.117(c)(3). With this change, bicycle projects involving

land acquisition and construction would require a written CE demonstration.

Paragraph (d)(19) (storm water management) would add a new CE that covers a transportation enhancement activity that may involve land acquisition and construction of storm water detention or retention ponds. It is, therefore, proposed to be included in the list where a CE demonstration is required.

Paragraph (d)(20) (historic transportation facilities) would add a new CE that covers a transportation enhancement activity that will have section 106 (historic preservation) implications. It is, therefore, proposed to be included in the list where a CE demonstration is required.

Paragraph (d)(21) (other transportation enhancements) would add a new CE that covers the other transportation enhancement activities and transit enhancements that are not explicitly listed.

We propose additional, nonregulatory guidance on situations where a group of different, but related, categorically excluded actions may need to be evaluated as a whole if they have a net effect that warrants further environmental analysis (e.g., ITS projects throughout a corridor).

Some commenters including the Michigan DOT, the AASHTO and others requested that advance right-of-way acquisition be added to the categorical exclusion list. The U.S. EPA was concerned about coordinating any expansions of the list with other Federal agencies and was particularly concerned about wetlands mitigation needs. The Ohio DOT suggested that rather than expand the list of categorical exclusions, our agencies develop "thresholds of significance" whereby projects within those thresholds would be those considered for categorical exclusions. Finally, a number of commenters, including the Ventura County Transportation Commission, the ARTBA, and the Oregon DOT supported the categorical exclusion of transportation enhancement activities and suggested categorically excluding congestion mitigation and air quality program (CMAQ) eligible projects. We have considered these comments in devising the proposed list. Nevertheless, we invite comment on these suggestions and on the appropriateness of the activities proposed to be categorically excluded, including whether or not specific activities should be included in the list under paragraph (c) or the list under paragraph (d). We encourage commenters to provide examples or information drawn from their

experience bearing on the appropriateness of the proposed categorical exclusions. We also invite comments on the practice, begun with the 1987 regulation, of using an open-ended list of examples of activities that can be categorically excluded only after appropriate documentation has been prepared and approved on a case-by-case basis by the USDOT agency.

#### **Section 1420.313 Environmental Assessments**

Current § 771.119 would be redesignated as § 1420.313 with some minor editing changes.

#### **Section 1420.315 Findings of No Significant Impact**

Current § 771.121 would be redesignated as § 1420.121 with minor editing changes.

#### **Section 1420.317 Draft Environmental Impact Statements**

The proposed section would revise the current § 771.123 by expanding the description of both public involvement procedures and the information products developed in accordance to the proposed 23 CFR part 1410. Paragraph (b) would specifically indicate that the scoping process must consider the results of the planning process including public involvement and interagency coordination. Items related to mitigation would be expanded to

include environmental enhancements. Paragraph (b) would now emphasize public involvement and interagency coordination. Paragraph (c) would add language to our goals and policies in terms of implementing NEPA. The discussion on the use of consultants in the development of the draft EIS would be removed to avoid repetition with proposed § 1420.301.

#### **Section 1420.319 Final Environmental Impact Statements**

Current § 771.125 would be redesignated as § 1420.319. Information would be added in paragraph (a)(1) to require any additional environmental studies, public involvement, and/or coordination to consider refinements of alternatives and mitigation to be presented in the FEIS.

#### **Section 1420.321 Record of Decision**

Current § 771.127 would be redesignated as § 1420.321. In paragraph (a), the information about preparation of the notice of availability would be expanded to indicate where and to whom the notice should be provided. In paragraph (c), wording would be added to emphasize that mitigation and enhancement features associated with the selected alternative become enforceable conditions of any U.S. DOT actions.

#### **Section 1420.323 Re-evaluations**

Current § 771.129 would be redesignated as § 1420.323. Paragraphs (a) through (c) are essentially unchanged from the current regulation. Paragraph (d) has been added to ensure public involvement and interagency coordination when the situation warrants. Guidance will be provided on this subject. We invite comment on how effective the proposed reevaluation provision would be in addressing projects which are implemented over an extended period of time, with construction occurring under multiple contracts. We also invite comment on the appropriate role of public involvement in reevaluations.

#### **Section 1420.325 Supplemental Environmental Impact Statements**

Current § 771.130 would be redesignated as § 1420.325. It is essentially unchanged from the current regulation except that supplementation now includes consideration of public involvement and interagency coordination.

#### **Section-by-Section Analysis of the Proposed Rule on Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites**

For ease of reference, a distribution table is provided for the current sections and proposed sections as follows:

Current Section	Proposed Section
None .....	1430.101 Purpose.
771.109(a)(1) and (2) and part of 771.135(b) .....	1430.105 Applicability.
771.135(a) .....	1430.103 Mandate.
771.135(c) and (e) .....	1430.109 Significance.
771.135(p)(1),(2),(4), and (7) .....	1430.107 Use of land.
771.135(d),(f),(g),(h), and (p)(5) .....	1430.111 Exceptions.
771.135(a)(2), part of (b), part of (i), (j),(k),(l),(p)(3), and (p)(6) .....	1430.113 Evaluations under NEPA.
771.135(m) and (o) .....	1430.115 Separate evaluations.
771.135(i)[last sentence] .....	1430.117 Programmatic evaluations.
771.135(o) .....	1430.119 Linkage to planning.
None .....	1430.121 Definitions.

#### **Section 1430.101 Purpose**

This new section would be added to state that this regulation implements 49 U.S.C. 303 and 23 U.S.C. 138 (section 4(f)).

#### **Section 1430.103 Mandate**

Current § 771.135(a)(1) would be redesignated as § 1430.103 without substantive change in text.

#### **Section 1430.105 Applicability**

Current §§ 771.109(a)(1) and (2) provide the basis for this proposed section. Also, part of § 771.135(b) would be incorporated to make clear that the

U.S. DOT agency decides the applicability of section 4(f).

#### **Section 1430.107 Use of Land**

Current § 771.135(p)(1), (2), (4), and (7) would be redesignated as § 1430.107 without substantive change.

#### **Section 1430.109 Significance of the Section 4(f) Resource**

Current § 135(c) and (e) would be redesignated as § 1430.109 without substantive change.

#### **Section 1430.111 Exceptions**

Current § 771.135(d), (g), (h), and (p)(5) would be redesignated as

§ 1430.111 without substantive change. The proposed section also incorporates the current § 771.135(f), except that the consultation requirement has been modified to be consistent with the new 36 CFR part 800 recently published by the Advisory Council on Historic Preservation. As proposed, the provision is silent with respect to the relationship between "adverse effects" under 36 CFR part 800 and "constructive use" under this regulation. We invite comment as to whether or not a specific relationship should be established in this regulation. We also invite comment as to other measures that we might take to better

coordinate the section 4(f) process with the process established under 36 CFR 800. The proposed section also has three new provisions in paragraphs (a), (b), and (c), stating that section 4(f) would not apply to park roads, parkways, trails, transportation enhancement activities, and transit enhancements where the purpose of the U.S. DOT agency approval of transportation funding is to improve the section 4(f) resource.

**Section 1430.113 Section 4(f) Evaluations and Determinations Under the NEPA Umbrella**

Current § 771.135(a)(2), (j), (k), (l), (p)(3), (p)(6), most of (i), and part of (b) would be redesignated as § 1430.113 without substantive change. The proposed section also would include a new provision in proposed paragraph (b) allowing consideration of the products of the planning process in the section 4(f) evaluation. Both the current and proposed regulation continue to codify in regulation language of the Supreme Court decision in *Overton Park* (401 U.S. 402 (1971)) that an avoidance alternative must be preferred unless the evaluation demonstrates that there are "unique problems or unusual features associated with it, or that the cost, the social, economical, or environmental impacts, or the community disruption resulting from such alternatives reach extraordinary magnitudes." We invite comment on whether or not this standard deserves further definition in regulation or in guidance in light of changes to the highway program in the years since the court's decision. In particular, we would appreciate views on whether or not the qualitative importance or value of the section 4(f) resource should be explicitly taken into account in determining whether or not an avoidance alternative is "feasible and prudent," especially when balancing the impacts of the various alternatives.

**Section 1430.115 Separate Section 4(f) Evaluations**

Current § 771.135(m) and (n) would be redesignated as § 1430.115 without substantive change.

**Section 1430.117 Programmatic Section 4(f) Evaluations**

The last sentence of current § 771.135(i) would be redesignated as § 1430.117, including a new explanatory introductory sentence. The proposed provision would provide a clear regulatory basis for programmatic section 4(f) evaluations and approvals, a practice which the Department of Transportation has used from time to time. For example, programmatic

section 4(f) evaluations have been prepared for the following situations: Bikeways, historic bridges, projects involving minimal use of property for historic properties and projects involving minimal use of parkland. We invite suggestions of additional situations that would be appropriate subjects of future programmatic section 4(f) evaluations.

**Section 1430.119 Linkage with Transportation Planning**

Current § 771.135(o) would be redesignated as § 1430.119 and would remain substantively unchanged except that the concept of a preliminary section 4(f) evaluation has been extended to the planning process in exactly the same way it previously applied to first-tier EISs.

**Section 1430.121 Definitions**

A new § 1430.121 would be added to provide a consistent set of definitions of terms used in the planning regulations (23 CFR part 1410), the NEPA regulation (23 CFR part 1420), and this regulation (23 CFR part 1430).

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address or via the electronic addresses provided above. The FHWA and the FTA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA and the FTA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA and the FTA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

We have determined that this proposed action is a significant regulatory action within the meaning of Executive Order 12866, and under the Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements,

and balancing of transportation mobility and environmental goals. We anticipate that the economic impact of this rulemaking will be minimal. Most costs associated with these rules are attributable to the provisions of the TEA-21, the ISTEA, the Clean Air Act (as amended), and other statutes including earlier highway acts.

We consider this proposal to be a means to simplify, clarify, and reorganize existing regulatory requirements. There have been no changes to NEPA or CEQ regulations. These rules would merely revise existing NEPA regulations of the FHWA and the FTA and conform those regulations to the environmental streamlining requirements of TEA-21. In response to congressional direction in TEA-21, the U.S. DOT is proposing to implement improved coordinated environmental review processes for highway and transit projects. States have been carrying out statewide transportation planning activities with title 23, U.S.C., and FTA planning and research funds for many years. Neither the individual nor the cumulative impact of this action would be significant because this action would not alter the funding levels available to the States for Federal or federally-assisted programs covered by the TEA-21.

The amendments impose no additional requirements. The environmental streamlining process under section 1309 of TEA-21 establishes coordinated environmental review processes by which U.S. DOT would work with other Federal agencies to assure that major highway and transit projects are advanced according to cooperatively determined time frames. Such processes have been incorporated into a memorandum of understanding between U.S. DOT and other Federal agencies.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-602), we have evaluated the effects of this rule on small entities, such as local governments and businesses. The TEA-21 provides the flexibility for these agencies to provide the resources necessary to meet any time limits established under environmental streamlining. Additionally, the FHWA has issued guidance concerning transportation funding for Federal agency coordination using a full range of options for reimbursement under appropriate authorities. Accordingly, the FHWA and the FTA certify that this action would not have a significant economic impact on a substantial



number of small entities. This proposed action would merely update and clarify existing procedures. We specifically invite comments on the projected economic impact of this proposal, and will actively consider such information before completing our Regulatory Flexibility Act analysis when adopting final rules.

#### **Environmental Impacts**

We have also analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and preliminarily conclude that this action would not have any effect on the quality of the human and natural environment and is therefore categorically excluded under 23 CFR 771.117(c)(20). The TEA-21 directs the implementation of a coordinated environmental review process for highway construction projects, yet, also ensures that such concurrent review shall not result in a significant adverse impact to the environment or substantially alter the operation of Federal law. Time periods for review shall be consistent with time periods established by the Council on Environmental Quality under 40 CFR 1501.8 and 1506.10. As stated in the TEA-21, nothing in section 1309 (the environmental streamlining section) shall affect the applicability of NEPA or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

#### **Executive Order 13132 (Federalism Assessment)**

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient Federalism implications on States and local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The TEA-21 directs the DOT to establish an integrated NEPA review and permitting process and to encourage approvals as early as possible in the scoping and planning process, yet also to maintain an emphasis on a strong environmental policy. Throughout the proposed regulation there is an effort to keep administrative burdens to a minimum.

#### **Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205,

Highway planning and construction (or 20.217, Motor Carrier Safety). The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### **Unfunded Mandates Reform Act of 1995**

This rule does not impose a Federal mandate resulting in the expenditure by State, local, tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. (2 U.S.C. 1531 *et seq.*)

#### **Paperwork Reduction Act**

This proposal contains no new collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. This notice of proposed rulemaking would encourage the coordination of approvals by Federal agencies involved in the NEPA process and could reduce the level of recordkeeping.

The information prepared by non-Federal parties pursuant to this proposed regulation is exempt from the requirements of the Paperwork Reduction Act. First, the collection of information does not entail reporting of information in response to identical questions. NEPA documents do not involve answering specific questions; they address issues relating to the requirements of multiple Federal environmental statutes. There are too many variables relating to the proposed action, the location in which the action is to be taken, and the statutes that are implicated (and to what extent) to permit a standardized format or content. The issues to be addressed in NEPA documents are therefore determined on a case by case basis. Each is a one of a kind document.

Second, the information is not requested of non-Federal entities but of Federal agencies. The State and local transportation departments and transit agencies compiling information are voluntarily serving as consultants to FHWA and FTA for their own convenience. As the proposers of the actions subject to NEPA, and the owners, operators, and maintainers of the resulting facility, and key decisionmakers regarding the choices involved in project development, it is easier for them to prepare the NEPA documents. Information is not requested of outside entities except within the PRA exception relating to "facts or opinions submitted in response from general solicitations of comments for the general public (5 CFR 1320.3(h)(4))."

Third, State and local departments of transportation and transit agencies develop this information reported to FHWA/FTA as a normal part of doing business. NEPA documents contain engineering and environmental information that is integral to developing projects in a way that conforms to State and local laws. The development of engineering and environmental information is an unavoidable step in project development whether or not the Federal government is involved. We invite comments on this analysis.

#### **Executive Order 12630 (Taking of Private Property)**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### **Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to healthy or safety that may disproportionately affect children.

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### **List of Subjects**

##### **23 CFR Part 771**

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

##### **23 CFR Part 1420**

Environmental impact statements, Grant programs—transportation, Highways and roads, Mass

transportation, Reporting and recordkeeping requirements.

#### 23 CFR Part 1430

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Mass transportation, Public lands, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

#### 49 CFR Part 622

Environmental impact statements, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

#### 49 CFR Part 623

Environmental protection, Grant programs—transportation, Mass Transportation, Public lands, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

#### Federal Highway Administration

#### 23 CFR Chapter I

For reasons set forth in the preamble, and under the authority of 23 U.S.C. 109, 128, 134, 138, and 315, the Federal Highway Administration proposes to amend Chapter I of title 23, Code of Federal Regulations, as follows:

#### PART 771—[REMOVED]

1. Remove part 771.

#### 23 CFR Chapter IV

For reasons set forth in the preamble, the Federal Highway Administration and the Federal Transit Administration propose to amend proposed Chapter IV in title 23, Code of Federal Regulations (published elsewhere in this Federal Register), as set forth below:

2. Add parts 1420 and 1430 to read as follows:

#### PART 1420—NEPA AND RELATED PROCEDURES FOR TRANSPORTATION DECISIONMAKING

##### Subpart A—Purpose, Policy, and Mandate

Sec.

- 1420.101 Purpose.
- 1420.103 Relationship of this regulation to the CEQ regulation and other guidance.
- 1420.105 Applicability of this part.
- 1420.107 Goals of the NEPA process.
- 1420.109 The NEPA umbrella.
- 1420.111 Environmental justice.
- 1420.113 Avoidance, minimization, mitigation, and enhancement responsibilities.

##### Subpart B—Program and Project Streamlining

- 1420.201 Relation of planning and project development processes.
- 1420.203 Environmental streamlining.
- 1420.205 Programmatic approvals.
- 1420.207 Quality assurance process.
- 1420.209 Alternate procedures.
- 1420.211 Use of this part by other U.S. DOT agencies.
- 1420.213 Emergency action procedures.

##### Subpart C—Process and Documentation Requirements

- 1420.301 Responsibilities of the participating parties.
- 1420.303 Interagency coordination.
- 1420.305 Public involvement.
- 1420.307 Project development and timing of activities.
- 1420.309 Classes of actions.
- 1420.311 Categorical exclusions.
- 1420.313 Environmental assessments.
- 1420.315 Findings of no significant impact.
- 1420.317 Draft environmental impact statements.
- 1420.319 Final environmental impact statements.
- 1420.321 Record of decision.
- 1420.323 Re-evaluations.
- 1420.325 Supplemental environmental impact statements.

##### Subpart D—Definitions

- 1420.401 Terms defined elsewhere.
- 1420.403 Terms defined in this part.

Authority: 23 U.S.C. 109, 128, 134, 138 and 315; 42 U.S.C. 2000d–2000d–4, 4321 *et seq.*, and 7401 *et seq.*; 49 U.S.C. 303, 5301(e), 5303, 5309, and 5324 (b) and (c); 49 CFR 1.48, and 1.51; 33 CFR 115.60(b); 40 CFR parts 1500–1508.

##### Subpart A—Purpose, Policy, and Mandate

###### § 1420.101 Purpose.

The purpose of this part is to establish policies and procedures of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 (NEPA) as amended, and to supplement the regulation of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508. In concert with 23 CFR 1410 this part sets forth a NEPA process that integrates and streamlines the compliance with all applicable transportation and environmental laws that govern Federal transportation decisionmaking.

###### § 1420.103 Relationship of this regulation to the CEQ regulation and other guidance.

The CEQ regulation lays out NEPA responsibilities for all Federal agencies. This FHWA/FTA regulation supplements the CEQ regulation with specific provisions regarding the FHWA/FTA approach to implementing NEPA for the Federal surface

transportation actions under their jurisdiction. For a full understanding of NEPA responsibilities relative to the FHWA/FTA actions, the reader must refer to both this regulation and the CEQ regulation. In addition, the FHWA/FTA will rely on nonregulatory guidance materials, training courses, and documentation of best practices in the management of their NEPA responsibilities. The available materials and training course schedules are posted on the FHWA and the FTA web sites and can be obtained by contacting Planning and Environment Program Manager, Federal Highway Administration, Washington, DC 20590 or Associate Administrator for Planning, Federal Transit Administration, Washington, DC 20590.

###### § 1420.105 Applicability of this part.

(a)(1) The provisions of this part and the CEQ regulation apply to actions where a U.S. DOT agency exercises sufficient control and has the statutory authority to condition the action or approval. Actions taken by the applicant or others that do not require any U.S. DOT agency approval or over which a U.S. DOT agency has no discretion, including, but not limited to, projects or maintenance on Federal-aid highways or transit systems not involving Federal-aid funds or approvals, and actions from which the U.S. DOT agency are excluded by law or regulation, are not subject to this part.

(2) This part does not apply to, or alter approvals by the U.S. DOT agencies made prior to the effective date of this part.

(3) NEPA documents accepted or prepared by the U.S. DOT agency after the effective date of this part shall be developed in accordance with this part.

(b) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the actions covered by each environmental impact statement (EIS) or environmental assessment (EA), or designated a categorical exclusion (CE) shall:

(1) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made;

(2) Connect logical termini, if linear in configuration, and be of sufficient length or size to address environmental matters over a sufficiently wide area that all reasonably foreseeable impacts are considered; and

(3) Not restrict consideration of alternatives for other reasonably

foreseeable transportation improvements.

#### § 1420.107 Goals of the NEPA process.

(a) It is the intent of the U.S. DOT agencies that the NEPA principles of environmental stewardship and the Transportation Equity Act for the 21st Century (TEA-21) objective of timely implementation of transportation facilities and provision of transportation services should guide Federal, State, local, and tribal decisionmaking on all transportation actions subject to these laws. Accordingly, in administering their responsibilities under numerous transportation and environmental laws, the U.S. DOT agencies will manage the NEPA process to maximize attainment of the following goals:

(1) *Environmental ethic.* Federal actions reflect concern for, and responsible choices that preserve, communities and the natural environment, in accordance with the purpose and policy direction of NEPA (42 U.S.C. 4321 and 4331), and the specific mandates of statutes, regulations, and executive orders.

(2) *Environmental justice.* Disproportionate adverse effects on minority and low income populations are identified and addressed; no person, because of handicap, age, race, color, sex, or national origin, is excluded from participating in, denied the benefits of, or subject to discrimination under any U.S. DOT agency program or activity conducted in accordance with this regulation.

(3) *Integrated decisionmaking.* Federal transportation approvals are coordinated in a logical fashion with other Federal reviews and approvals, and with State, local, and tribal governmental actions, and actions by private entities, in recognition of interdependencies of decisions by the various parties and the procedural umbrella that the NEPA process provides for facilitating decisionmaking.

(4) *Environmental streamlining.* Federal transportation and environmental reviews and approvals are completed in a timely fashion through a coordinated review process.

(5) *Collaboration.* Transportation decisions are made through a collaborative partnership involving Federal, State, local, and tribal agencies, communities, interest groups, private businesses, and interested individuals.

(6) *Transportation problem solving.* Transportation decisions represent cost effective solutions to current and future problems based on an interdisciplinary evaluation of alternative courses of action.

(7) *Financial stewardship.* Public funds are used to achieve the maximum benefit for the financial investment in accordance with governing statutes and regulations.

#### § 1420.109 The NEPA umbrella.

(a) In keeping with the above goals, it is the policy of the FHWA/FTA that the NEPA process be the means of bringing together all legal responsibilities, issues, and interests relevant to the transportation decision in a logical way to evaluate alternative courses of action, and that it lead to a single final decision regarding the key characteristics of a proposed action (such as, location, major design features, mitigation measures, and environmental enhancements). This decision shall be made in the best overall public interest based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental benefits and impacts of the proposed action; and the attainment of national, State, tribal, and local environmental protection goals.

(b) Any environmentally related study, review, or consultation required by Federal law should be conducted within the framework of the NEPA process to assure integrated and efficient decisionmaking. The State is encouraged to conduct its activities during the NEPA process toward the same goal.

(c) Federal responsibilities to be addressed in the NEPA process whenever applicable to the decision on the proposed action include, but are not limited to the following protections of:

##### (1) *Individual rights:*

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) and related statutes;

(ii) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), as amended;

(iii) Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*);

(iv) 49 U.S.C. 5332,

nondiscrimination;

(v) 49 U.S.C. 5324(a), relocation requirements;

(vi) 23 U.S.C. 128 and 49 U.S.C. 5323(b), public hearing requirements;

##### (2) *Communities and community resources:*

(i) Executive Order 12898 (59 FR 7629, 3 CFR, 1995 comp., p. 859), environmental justice for minority and low-income populations;

(ii) 49 U.S.C. 303, protection of public parks and recreation areas;

(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(iv) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(v) 23 U.S.C. 109(i), highway noise standards;

(vi) Clean Air Act (23 U.S.C. 109(j), 42 U.S.C. 7509 and 7521(a) *et seq.*), as amended;

(vii) Safe Drinking Water Act (42 U.S.C. 201 and 300);

(viii) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201-4209);

(ix) National Flood Insurance Act (42 U.S.C. 1401, 2414, 4001 to 4127);

(x) Solid Waste Disposal Act (Public Law 89-272; 42 U.S.C. 6901 *et seq.*);

(xi) Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*);

(xii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*);

(xiii) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001 to 11050);

##### (3) *Cultural resources and aesthetics:*

(i) 49 U.S.C. 303, protection of historic sites;

(ii) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(iv) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(v) 23 U.S.C. 109(i), highway noise standards;

(vi) Clean Air Act (23 U.S.C. 109(j), 42 U.S.C. 7509 and 7521(a) *et seq.*), as amended;

(vii) Safe Drinking Water Act (42 U.S.C. 201 and 300);

(viii) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201-4209);

(ix) National Flood Insurance Act (42 U.S.C. 1401, 2414, 4001 to 4127);

(x) Solid Waste Disposal Act (Public Law 89-272; 42 U.S.C. 6901 *et seq.*);

(xi) Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*);

(xii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*);

(xiii) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001 to 11050);

##### (3) *Cultural resources and aesthetics:*

(i) 49 U.S.C. 303, protection of historic sites;

(ii) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(iv) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(v) Archeological and Historic Preservation Act (16 U.S.C. 469);  
 (vi) Archeological Resources Protection Act (16 U.S.C. 470aa to 47011);  
 (vii) Act for the Preservation of American Antiquities (16 U.S.C. 431 to 433);  
 (viii) American Indian Religious Freedom Act (42 U.S.C. 1996 *et seq.*);  
 (ix) Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 to 3013);  
 (x) 23 U.S.C. 144(o), historic bridges;  
 (xi) 23 U.S.C. 530, wildflowers;  
 (xii) 23 U.S.C. 131, 136, 319, highway beautification;  
 (4) *Waters and water-related resources*:  
 (i) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;  
 (ii) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;  
 (iii) Federal Water Pollution Act, as amended (33 U.S.C. 1251 to 1376);  
 (iv) Wild and Scenic Rivers Act (16 U.S.C. 1271 to 1287);  
 (v) Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460);  
 (vi) Water Bank Act (16 U.S.C. 1301 to 1311);  
 (vii) Executive Order 11990 (42 FR 26961; 3 CFR, 1977 comp., p. 121), protection of wetlands;  
 (viii) Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3921 to 3931);  
 (ix) Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*);  
 (x) Executive Orders 11988 (42 FR 26951; 3 CFR, 1977 comp., p. 1171) and 12148 (44 FR 43239; 3 CFR, 1979 comp., p. 412), floodplain management;  
 (5) *Wildlife, plants and natural areas*:  
 (i) Endangered Species Act of 1973 (7 U.S.C. 136, 16 U.S.C. 1531 to 1543);  
 (ii) 49 U.S.C. 303, protection of wildlife and waterfowl refuges;  
 (iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;  
 (iv) 9 U.S.C. 5324(b), economic, social, and environmental effects of transit;  
 (v) Marine Protection Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 to 1445, 33 U.S.C. 1401 to 1445);  
 (vi) Fish and Wildlife Coordination Act (16 U.S.C. 661 to 666);  
 (vii) Wilderness Act (16 U.S.C. 1131 to 1136);  
 (viii) Wild and Scenic Rivers Act (16 U.S.C. 1271 to 1287);  
 (ix) Coastal Zone Management Act of 1972 (16 U.S.C. 1451 to 1464);  
 (x) Coastal Barrier Resources Act (16 U.S.C. 3501 to 3510, 42 U.S.C. 4028);  
 (xi) National Trails System Act (16 U.S.C. 1241 to 1249);

(xii) Executive Order 13112 (64 FR 6183), Invasive Species.

#### **§ 1420.111 Environmental justice.**

(a) In accordance with the goals established in Executive Order 12898, as implemented by DOT Order 5610.2 and the FHWA Order 6640.23,<sup>1</sup> and the requirements of the Civil Rights Act of 1964, Title VI, and its implementing regulations, proposed actions shall be developed in a manner to avoid or mitigate disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, on low income populations and minority populations. Adverse effects can include a denial of or reduction in benefits.

(b) In performing an environmental analysis of proposed actions, applicants must analyze data necessary to determine whether the actions will have disproportionately high and adverse effects on low income and minority communities. When disproportionately high and adverse effects are found, the applicant must identify measures to address these disproportionate effects, including actions to avoid or mitigate them, or it must explain and justify why such measures cannot be taken.

(c) The findings and determinations made pursuant to paragraphs (a) and (b) of this section must be documented as part of the NEPA document prepared for the proposed action, or in a supplemental document if the NEPA process has been completed.

(d) In accordance with Executive Order 12898, DOT Order 5610.2, and the FHWA Order 6640.23, nothing in this section is intended to, nor shall create, any right to judicial review of any action taken by the agency, its officers or its recipients taken under this section to comply with such Orders.

#### **§ 1420.113 Avoidance, minimization, mitigation, and enhancement responsibilities.**

(a) In accordance with the goals established in § 1420.107, it is the policy of the FHWA and the FTA that proposed actions be developed as described in this section, to the fullest extent practicable. For the purposes of this section, "practicable" means a common sense balancing of environmental values with safety, transportation need, costs, and other relevant factors in decisionmaking. No additional findings or paperwork are required.

(1) Adverse social, economic, and environmental impacts to the affected

human communities and the natural environment should be avoided.

(2) Where adverse impacts cannot be avoided, proposed measures should be developed to minimize adverse impacts.

(3) Measures necessary to mitigate unavoidable adverse impacts be incorporated into the action, or should be part of a mitigation program completed in advance of the action.

(4) Environmental enhancements should be evaluated and incorporated into the action as appropriate.

(b) Mitigation measures and environmental enhancements shall be eligible for Federal funding to the fullest extent authorized by law.

(c) NEPA commitments.

(1) It shall be the responsibility of the applicant in cooperation with the U.S. DOT agency to implement those mitigation measures and environmental enhancements, stated as commitments in the final EIS/ROD, EA/FONSI, or CE prepared or supplemented pursuant to this regulation, unless the commitment is modified or eliminated in a supplemental final EIS/ROD, EA/FONSI or CE, or re-evaluation approved by the U.S. DOT agency.

(2) If a final EIS/ROD, EA/FONSI, CE, or other U.S. DOT agency approval commits to coordination with another agency during the final design and construction phase, or during the operational phase of the action, the applicant is responsible for such coordination, unless the commitment is removed in a supplemental final EIS/ROD, EA/FONSI or CE, or re-evaluation approved by the U.S. DOT agency.

#### **Subpart B—Program and Project Streamlining**

##### **§ 1420.201 Relationship of planning and project development processes.**

(a) The planning products described in § 1410.318 shall be considered early in the NEPA process. The FTA and the FHWA encourage all Federal, State and local agencies with project level responsibilities for investments included in a transportation plan to participate in the planning process so as to maximize the usefulness of the planning products for the NEPA process and eliminate duplication.

(b) Applicants preparing documents under this part shall, to the maximum extent useful and practicable, incorporate and utilize analyses, studies, documents, and other sources of information developed during the transportation planning processes of 23 CFR part 1410 and other planning processes in satisfying the requirements of the NEPA process. The provisions of 40 CFR 1502.21 (incorporation by reference) will be used as appropriate.

<sup>1</sup> These documents are available for inspection and copying as prescribed at 49 CFR part 7.

(c) During scoping for an EIS or early coordination for an environmental assessment, the U.S. DOT agency and the applicant shall, in consultation with the transportation planning agencies responsible for inclusion of the project in the metropolitan (if applicable) and statewide plan and program, review the record of previously completed planning activities, including any existing statement of purpose and need and evaluation of alternatives. Where the U.S. DOT agency, in cooperation with the applicant, determines that planning decisions are adequately supported, the detailed evaluation of alternatives required under § 1420.313(b) or § 1420.317(c) may be limited to the no action and reasonable alternatives requiring further consideration. In deciding which of the evaluations and conclusions of the planning process are adequately supported and may be incorporated during the NEPA process, the U.S. DOT agency and the applicant shall take into account the following:

- (1) The validity and completeness of the supporting analyses.
- (2) The public involvement process associated with those planning products.
- (3) The degree of coordination with Federal, State, and local resource agencies with interest in or authority over the ultimate action(s); and
- (4) The level of formal endorsement of the analyses and conclusions by participants in the planning process.

#### § 1420.203 Environmental streamlining.

(a) For highway and mass transit projects requiring an environmental impact statement, an environmental assessment, or an environmental review, analysis, opinion, or environmental permit, license, or approval by operation of Federal law, as lead Federal agency, the U.S. DOT agency, in cooperation with the applicant, shall perform the following:

- (1) Consult with the applicant regarding the issues involved, the likely Federal involvement, and project timing.
- (2) Early in the NEPA process, contact Federal agencies likely to be involved in the proposed action to verify the nature of their involvement and to discuss issues, methodologies, information requirements, time frames and constraints associated with their involvement.
- (3) Identify and use the appropriate means listed in 40 CFR 1500.4 and 1500.5 for reducing paperwork and reducing delay.
- (4) Document the results of such consultation and distribute to the

appropriate Federal agencies for their concurrence, identifying at a minimum the following:

- (i) Federal reviews and approvals needed for the action,
  - (ii) Those issues to be addressed in the NEPA process and those that need no further evaluation,
  - (iii) Methodologies to be employed in the conduct of the NEPA process,
  - (iv) Proposed agency and public involvement processes, and
  - (v) A process schedule.
- (5) Identify, during the course of completing the NEPA process, points of interagency disagreement causing delay and immediately take informal measures to resolve or reduce delay. If these measures are not successful in a reasonable time, the U.S. DOT agency shall initiate a dispute resolution process pursuant to section 1309 of the TEA-21.

(b) A State may request that all State agencies with environmental review or approval responsibilities be included in the coordinated environmental review process and, with the consent of the U.S. DOT agency, establish an appropriate means to assure that Federal and State environmental reviews and approvals are fully coordinated.

(c) At the request of the applicant, the coordinated environmental review process need not be applied to an action not requiring an environmental impact statement.

(d) In accordance with the CEQ regulations on reducing paperwork (40 CFR 1500.4), NEPA documents prepared by DOT agencies need not devote paper to impact areas and issues that are not implicated in the proposed action and need not make explicit findings on such issues.

#### § 1420.205 Programmatic approvals.

(a) Nothing in this part shall prohibit the U.S. DOT agency from making approvals which apply to future actions consistent with the conditions established for such programmatic approvals.

(b) Applicants shall cooperate with the U.S. DOT agency in conducting program evaluations to ensure that such programmatic approvals are being properly applied.

#### § 1420.207 Quality assurance process.

(a) The FHWA and the FTA shall institute a process to assure that actions subject to this part meet or exceed legal requirements and are processed in a timely manner.

(b) For actions processed with an environmental impact statement, this process shall include a legal sufficiency review and may require the prior

concurrence of the Headquarters office in accordance with procedures established by the FTA and the FHWA.

#### § 1420.209 Alternate procedures.

(a) An applicant may propose to the U.S. DOT agency alternative procedures for complying with the intent of this part with respect to its actions.

(b) The U.S. DOT agency shall publish such alternative procedures in the **Federal Register** for notice and comment and shall consult with the CEQ pursuant to 40 CFR 1507.3.

(c) After taking into account comments received, and negotiating with the applicant appropriate changes to such alternative procedures, the U.S. DOT agency shall approve such alternative procedures only after making a finding that the alternative procedures will be fully effective at complying with NEPA and related responsibilities.

#### § 1420.211 Use of this part by other U.S. DOT agencies.

As authorized by the Secretary, other U.S. DOT agencies may use this part for specific actions or categories of actions under their jurisdiction.

#### § 1420.213 Emergency action procedures.

Requests for deviations from the procedures in this part because of emergency circumstances shall be referred to the U.S. DOT agency for evaluation and decision in consultation with the CEQ in accordance with 40 CFR 1506.11.

### Subpart C—Process and Documentation Requirements

#### § 1420.301 Responsibilities of the participating parties.

(a) The CEQ regulation establishes rules for lead agencies (40 CFR 1501.5) and cooperating agencies (40 CFR 1501.6). It also encourages Federal agencies to cooperate with State and local agencies to eliminate duplication (40 CFR 1506.2) and defines the relationship between Federal agencies, applicants, and contractors (40 CFR 1506.5).

(b) For actions on Federal lands that are developed directly by the U.S. DOT agency in cooperation with the Federal land management agency, responsibilities for management of the NEPA process shall be as established by interagency agreement or procedure.

(c) Use of contractors.

(1) The U.S. DOT agency or an applicant may select and use contractors, in accordance with applicable contracting procedures, and the provisions of 40 CFR 1506.5(c), in support of their respective roles in the NEPA process. An applicant which is a

State agency with statewide jurisdiction may select a contractor to assist in the preparation of an EIS. Where the applicant is not a State agency with statewide jurisdiction, the applicant may select a contractor, after coordination with the U.S. DOT agency to assure compliance with 40 CFR 1506.5(c) relative to conflict of interest. Contractors that have a role in the actual writing of a NEPA document shall execute a disclosure statement in accordance with 40 CFR 1506.5(c), specifying that such contractor has no financial or other interest in the outcome of the action (other than engineering with the exception allowed by paragraph (c)(2) of this section, if applicable), and will not acquire such an interest prior to the approval of the final NEPA document by the U.S. DOT agency or the termination of the contractor's involvement in writing the NEPA document, whichever occurs first.

(2) A State may procure the services of a consultant, under a single contract, for environmental impact assessment and subsequent engineering and design work, provided that the State conducts a review that assesses the objectivity of the NEPA work in accordance with the provisions of 23 U.S.C. 112(g).

#### **§ 1420.303 Interagency coordination.**

(a) Interagency coordination during the NEPA process involves the early and continuing exchange of information with interested Federal, State, local public agencies, and tribal governments. Interagency coordination should begin early as part of the planning process and continue through project development, the preparation of an appropriate NEPA document, and, by agreement, into the implementation stage of the action. Interested agencies include those that express a continuing interest in any aspect of the actions during the planning process and project development processes. They include those agencies whose jurisdiction, responsibilities, or expertise may involve any aspect of the action or its alternatives. The purpose of interagency coordination is to aid in determining the class of action, the scope of the NEPA document, the identification of key issues, the appropriate level of analysis, methods of avoidance, minimization, and mitigation of adverse impact, opportunities for environmental enhancement, and related environmental requirements. Coordination early in the NEPA process must extend beyond agencies consulted during the planning process to those agencies whose interest begins only when preliminary designs of alternative

actions are being developed. The appropriate frequency and timing of coordination with a particular agency will depend on the interests of the agency consulted.

(b) Federal land management entities, neighboring States, and tribal governments, that may be significantly affected by the action or by any of the alternatives shall be notified early in the NEPA process and their views solicited by the applicant in cooperation with the U.S. DOT agency.

(c) Upon U.S. DOT agency written approval of an EA, FONSI, separate section 4(f) determination, or CE designation, the applicant shall send a notice of availability of the approved document, or a copy of the approved document itself, to the affected units of Federal, State, and local government. The notice shall briefly describe the action and its location and impacts. Cooperating agencies shall be provided a copy of the approved document.

#### **§ 1420.305 Public involvement.**

(a) The applicant must have a continuing program of public involvement which actively encourages and facilitates the participation of transportation and environmental interest groups, citizens groups, private businesses, and the general public including minority and low income populations through a wide range of techniques for communicating and exchanging information. The applicant shall use the products of the public involvement process developed during planning pursuant to 23 CFR 1410.212 and 1410.316, whenever such information is reasonably available and relevant, to provide continuity between the public involvement programs.

(b) Each applicant developing projects under this part must adopt written procedures to carry out the public involvement requirements of this section and 40 CFR 1506.6, and, as appropriate, 23 U.S.C. 128, and 49 U.S.C. 5323(b) and 5324(b). The applicant's public involvement procedures shall apply to all classes of action as described in § 1420.309 and shall be developed in cooperation with other transportation agencies with jurisdiction in the same area, so that, to the maximum extent practicable, the public is presented with a consistent set of procedures that do not vary with the transportation mode of the proposed action or with the phase of project development. Where two or more involved parties have separate established procedures, a cooperative process for determining the appropriate public involvement activities and their consistency with the separate agency's

procedures will be cooperatively established.

(c) Public involvement procedures must provide for the following:

(1) Coordination of public involvement activities with the entire NEPA process and, when appropriate, with the planning process. The procedures also must provide for coordination and information required to comply with public involvement requirements of other related laws, executive orders, and regulations;

(2) Early and continuing opportunities for the public to be informed about, and involved in the identification of social, economic, and environmental impacts and impacts associated with relocation of individuals, groups, or institutions;

(3) The use of an appropriate variety of public involvement activities, techniques, meeting and hearing formats, and notification media;

(4) A scoping process that satisfies the requirements of 40 CFR 1501.7;

(5) One or more public hearings or the opportunity for hearing(s) to be held at a convenient time and place that encourage public participation, for any project which requires the relocation of substantial numbers of people, substantially changes the layout or functions of connecting transportation facilities or of the facility being improved, has a substantial adverse impact on abutting property, substantially affects a community or its mass transportation service, otherwise has a substantial social, economic, environmental or other effect, or for which the U.S. DOT agency determines that a public hearing is in the public interest;

(6) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing where a hearing is determined appropriate. Such notice shall indicate the availability of explanatory information;

(7) Where appropriate, the submission to the U.S. DOT agency of a transcript of each public hearing and a certification (pursuant to 23 U.S.C. 128 or 49 U.S.C. 5324(b)(2)) that a required hearing or hearing opportunity was offered. The transcript should be accompanied by copies of all written statements from the public, submitted either at the public hearing or during an announced period after the public hearing;

(8) Specific procedures for complying with the public and agency involvement and notification requirements for the following: EAs, Findings of no significant impact (FONSI), Draft EISs, Final EISs, and Records of decision (ROD);



(9) Reasonable accommodations for participation by persons with disabilities, including, upon request, the provision of auxiliary aids and services for understanding speakers at meetings and environmental documents.

(d) Where a re-evaluation of NEPA documents is required pursuant to § 1420.323, the U.S. DOT agency and the applicant will determine whether changes in the project or new information warrant additional public involvement.

(e) A minimum public comment period of 45 days shall be provided prior to the initial adoption or substantial revision of public involvement procedures.

(f) Public involvement procedures in effect as of the date of this part remain valid, but will be reviewed periodically for effectiveness.

**§ 1420.307 Project development and timing of activities.**

(a) The FHWA and/or the FTA will not approve the initiation and will not authorize funding for final design activities, property acquisition (except the types of advance land acquisitions described in § 1420.311(d)(16)), purchase of construction materials or transit vehicles, or construction, until the following have been completed:

(1)(i) The action has been classified as a categorical exclusion (CE), or  
(ii) A FONSI has been approved, or  
(iii) A final EIS has been approved, made available for the prescribed period of time, and a record of decision has been signed;

(2) The U.S. DOT agency has received transcripts of public hearings held, and any required certifications that a hearing or opportunity for a hearing was provided; and

(3) The planning and programming requirements of 23 CFR part 1410 have been met.

(b) Before completion of the NEPA document, if it becomes apparent that the preferred alternative will not be consistent with the design concept and scope of the action identified in the relevant plan and TIP, the applicant shall immediately notify the State agency responsible for the State TIP, and, in metropolitan areas, the MPO, so that the planning and programming requirements of 23 CFR part 1410 can be satisfied prior to the approval of a final EIS, Record of Decision, FONSI or CE.

(c) Compliance with the requirements of all applicable environmental laws, regulations, executive orders, and other related requirements as set forth in § 1420.109 should be completed prior to the approval of the final EIS, FONSI, or the CE designation. If full compliance is

not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. However, full compliance with the U.S. EPA's conformity regulation at 40 CFR parts 51 and 93 is required prior to the approval of the ROD, FONSI or CE designation. Approval of the NEPA document constitutes adoption of DOT agency findings and determinations that are contained therein unless otherwise specified. The FHWA approval of the appropriate NEPA document will constitute its finding of compliance with the report requirements of 23 U.S.C. 128. The FTA approval of the appropriate NEPA document indicates compliance with 49 U.S.C. 5324(b) and fulfillment of the grant application requirements of 49 U.S.C. 5323(b), if such requirements are applicable to the action.

(d) The completion of the requirements set forth in this section is considered the U.S. DOT agency's acceptance of the location of the action and design concepts described in the NEPA document unless otherwise specified by the approving official. However, such acceptance does not commit the U.S. DOT agency to approve any future grant request to fund the preferred alternative.

**§ 1420.309 Classes of actions.**

(a) Class I (EISs). Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions normally requiring an EIS:

(1) A new controlled access freeway.  
(2) A highway project of four or more lanes on a new location.

(3) New construction or major extension of fixed rail transit facilities (e.g., rapid rail, light rail, automated guideway transit).

(4) New construction or major extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(5) New construction or major extension of an intercity railroad not located within existing railroad right-of-way.

(6) A multimodal or intermodal facility that includes or requires any of the other Class I actions.

(b) Class II (Categorical Exclusions). Actions that do not individually or cumulatively have a significant environmental impact are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is

set forth in § 1420.311(c). Additional actions not listed may be designated as CEs pursuant to § 1420.311(d), if documented environmental studies demonstrate that the action would not, either individually or cumulatively, have a significant environmental impact.

(c) Class III (EAs). Actions in which the significance of the environmental impact is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate, subsequent NEPA document (i.e., Findings of no significant impact or EIS).

**§ 1420.311 Categorical exclusions.**

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and are known, on the basis of past experience with similar actions, not to involve significant environmental impacts. They are actions which: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the U.S. DOT agency, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Unique environmental impacts;  
(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by 49 U.S.C. 303 (section 4(f)) or section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and § 1420.311(a) of this regulation. If other environmental laws (i.e., those listed in § 1420.109(c)) do not apply to the action, then it does not require any further NEPA approval by the U.S. DOT agency. If the U.S. DOT agency is not sure of the applicability of one of these CEs or of other environmental laws to a particular proposed action, the applicant will be

required to provide supporting documentation in accordance with paragraph (d) of this section. The following are CEs:

(1) Activities which do not involve or lead directly to construction, such as program administration (e.g., personnel actions, procurement of consulting services or office supplies); the promulgation of rules, regulations, directives, and legislative proposals; planning and technical studies; technical assistance activities; training and research programs; technology transfer activities; research activities as defined in 23 U.S.C. 501-507; archaeological planning and research; approval of a unified planning work program; development and establishment of management systems under 23 U.S.C. 303; approval of project concepts under 23 CFR part 476; preliminary engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; Federal-aid system revisions which establish classes of highways; and designation of highways to the National Highway System.

(2) Modernization of a highway by resurfacing.

(3) Routine maintenance or minor rehabilitation of existing transportation facilities, including pavements, tracks, railbeds, bridges, structures, stations, terminals, maintenance shops, storage yards, and buildings, that occurs entirely on or within the facility, where there is no change in the character and use of the facility, and no substantial disruption of service or traffic; purchase of associated capital maintenance items; preventive maintenance of transit facilities, vehicles, and other equipment.

(4) Incorporation of an Intelligent Transportation Systems (ITS) element into an existing transportation facility or service, including the development, purchase, installation, maintenance, improvement, and operation of a traveler information system, incident management and emergency response system, traffic management and control system, security system, or MAYDAY system that enables public agencies to detect and respond to emergency situations.

(5) Activities included in the State's highway safety program under 23 U.S.C. 402; enforcement of railroad safety regulations, including the issuance of emergency orders.

(6) Improvement of existing rest areas, toll collection facilities, truck weigh stations, traffic management and control centers, and vehicle emissions testing centers where no substantial land

acquisition or traffic disruption will occur.

(7) Carpool and vanpool projects, as defined in 23 U.S.C. 146, if no substantial land acquisition or traffic disruption will occur.

(8) Emergency repairs of highways, roads and trails under 23 U.S.C. 125; emergency repair of transit or railroad facilities after a natural disaster or catastrophic failure.

(9) Operating assistance to transit agencies.

(10) Acquisition of buses, rail vehicles, paratransit vehicles, and transit-support vehicles, where the use of these vehicles can be accommodated by existing facilities or by new facilities which are themselves CEs.

(11) Purchase or installation of operating or maintenance equipment to be located within an existing transportation facility with no significant impacts off the site; lease of existing facilities, vehicles, or other equipment for use in providing transit services; capital cost of contracting for transit services.

(12) Bus and rail car rehabilitation, including the retrofit or replacement of vehicles for alternative fuels, where the use of these vehicles can be accommodated by existing facilities or new facilities which are themselves CEs.

(13) Improvement of existing tracks, railbeds, communications systems, signal systems, security systems, and electrical power systems when carried out within the existing right-of-way without substantial service disruption.

(14) Construction of bicycle and pedestrian lanes, paths, and facilities within existing transportation facilities or right-of-ways; installation of equipment for transporting bicycles on transit vehicles.

(15) Alterations to transportation facilities or vehicles in order to make them accessible by persons with disabilities.

(16) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, lighting, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(17) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action; approvals of disposals of excess right-of-way; transfer of surplus assets, in accordance with 49 U.S.C. 5334(g); approval of utility installations along or across a transportation facility.

(18) Landscaping, streetscaping, public art and other scenic beautification; control and removal of outdoor advertising; acquisition of scenic easements and scenic or historic

sites for the purpose of preserving the site.

(19) Installation of noise barriers or other alterations to existing facilities to provide for noise reduction; alterations to existing non-historic buildings to provide for noise reduction.

(20) Contributions to statewide or regional efforts to conserve, restore, enhance, and create wetlands or wildlife habitats.

(d) Additionally, for individual proposed actions to be categorically excluded under this section, the applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied, that significant environmental effects will not result, that the applicant's public involvement process is consistent with the procedures adopted pursuant to § 1420.305, that any appropriate interagency coordination has occurred, and that any other applicable environmental laws (e.g., those listed in § 1420.109(c)) have been satisfied. This demonstration may require investigations of specific areas of impact to determine whether the CE criteria are satisfied. If the DOT agency is not certain that the appropriateness of the CE has been demonstrated, additional documentation or an EA or EIS will be required of the applicant. Examples of actions for which a CE demonstration may be possible include, but are not limited to:

(1) Modernization of a highway through restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing lanes), or travel lanes in the median of an existing facility, including any such action necessary to accommodate other transportation modes on an existing facility.

(2) Transportation operational improvements, including those that use ITS, such as, freeway surveillance and control systems, traffic signal monitoring and control systems, transit management systems, electronic fare payment systems, and electronic toll collection systems.

(3) Transportation safety improvements and programs; hazard eliminations, including construction of grade separation to replace existing highway-railway grade crossings; projects to mitigate hazards caused by wildlife; and seismic retrofit of existing transportation facilities or structures.

(4) Rehabilitation or reconstruction of tunnels, bridges, and other structures, and the approaches thereto.

(5) Modification or replacement of an existing bridge on essentially the same alignment or location.



(6) Construction of parking facilities or carpool and vanpool projects that involve land acquisition and construction.

(7) Construction of new buildings to house transportation management and control centers, carpool and vanpool operations centers, or vehicle emissions testing centers.

(8) Construction of new rest areas, toll collection facilities, truck weigh stations or auto emissions testing or safety testing facilities.

(9) Approvals for changes in highway access control.

(10) Improvement of existing tracks, railbeds, communications systems, signal systems, security systems, and electrical power systems, including construction of sidings or passing tracks; extension or expansion of rail electrification on existing, operating rail lines.

(11) Construction of new bus or rail storage and maintenance facilities in undeveloped areas or areas used predominantly for industrial or transportation purposes, where such facility is compatible with existing zoning, the site is located on or near a street with adequate capacity to handle anticipated traffic, and there is no significant air or noise impact on the surrounding community.

(12) Renovation, reconstruction, or improvement of existing rail, bus, and intermodal buildings and facilities, including conversion to use by alternative-fuel vehicles.

(13) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) or intermodal transfer facilities, when located in a commercial area or other high activity center in which there is adequate street capacity for projected traffic.

(14) Rehabilitation, renovation, or improvement of existing ferry terminals, piers, and facilities.

(15) Short-term demonstrations of rail service on existing tracks.

(16) An acquisition of land or property interests that meets the criteria of paragraph (d)(16)(i), (ii) or (iii) of this section may be evaluated against the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section separately from any planned action that would use the land or property interests. Any subsequent action that would use the acquired right-of-way or property interests and would require a DOT agency action must be separately reviewed in accordance with this part prior to any construction on, or change in the land.

The following types of acquisitions may qualify as CEs:

(i) Acquisition of an existing transportation right-of-way which is linear in its general configuration and is not publicly owned, such as a railroad or a private road, for the purpose of either maintaining preexisting levels of transportation service on the facility or of preserving the right-of-way for a future transportation action or transportation enhancement activity.

(ii) Acquisition of land, easements, or other property interests with the intent of preserving alternatives for a future transportation action, where the following conditions are met: The transportation action that would use the land or property interests has been specifically included in a transportation plan for the area adopted pursuant to 23 CFR part 1410 and such plan has been found by the U.S. DOT agency to conform to air quality plans in accordance with 40 CFR parts 51 and 93, if applicable; and the acquisition will not limit the evaluation of alternatives to the planned action that would use the land or property interests including shifts in alignment that may be required.

(iii) Acquisition of land or property interests for hardship or protective purposes where the following conditions are met: The transportation action that would use the land or property interests has been specifically included in a transportation plan for the area adopted pursuant to 23 CFR part 1410 and such plan has been found by the U.S. DOT agency to conform to air quality plans in accordance with 40 CFR parts 51 and 93, if applicable; the hardship and protective buying will be limited to a particular parcel or a small number of parcels related to the planned transportation action; and the acquisition will not limit the evaluation of alternatives to the planned action that would use the land or property interests, including shifts in alignment that may be required.

(17) Approvals for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(18) Construction of a bicycle transportation facility on its own, new right-of-way.

(19) Mitigation of water pollution due to storm water runoff from transportation facilities.

(20) Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad or bus facilities and canals).

(21) Transportation enhancement activities and transit enhancements

defined in 23 U.S.C. 101 and 49 U.S.C. 5302.

#### **§ 1420.313 Environmental assessments.**

(a) An EA shall be prepared by the applicant in consultation with the U.S. DOT agency for each action(s) that is not a CE and does not clearly require the preparation of an EIS, or where the U.S. DOT agency believes an EA would assist in determining the need for an EIS.

(b) The EA shall evaluate the social, economic, and environmental impacts of the proposed action, reasonable alternatives that would avoid or reduce adverse impacts, measures which would mitigate adverse impacts, and environmental enhancements if any that would aid in harmonizing the action with the surrounding community. The EA shall discuss compliance with other related environmental laws, regulations, and executive orders.

(c) The EA is subject to U.S. DOT agency approval before it is made available to the public as a U.S. DOT agency document.

(d) For actions that require an EA, the applicant, in consultation with the U.S. DOT agency, shall do the following:

(1) Conduct interagency coordination in accordance with § 1420.303, beginning at the earliest appropriate time, to advise agencies of the proposed action and to achieve the following objectives: Determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might avoid or mitigate adverse impacts; identify environmental enhancements that might aid in harmonizing the action with the surrounding community; and identify other environmental review and coordination requirements which should be performed concurrently with the EA. The results of interagency coordination to the time of EA approval by the U.S. DOT agency shall be included in the EA.

(2) Provide for public involvement in accordance with the procedures established pursuant to § 1420.305. Public involvement to the time of EA approval by the U.S. DOT agency shall be summarized in the EA.

(e) The EA need not be circulated for comment but the document must be made available for inspection in public places readily accessible to the affected community in accordance with paragraphs (f) and (g) of this section. Notice of availability of the EA, briefly describing the action(s) and its impacts, or a copy of the EA, shall be sent by the applicant to the affected units of Federal, State and local government.

(f) When, in accordance with the public involvement procedures established pursuant to § 1420.305, a public hearing on an action evaluated in an EA is held, the following shall occur:

(1) The EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing.

(2) The notice of the public hearing in local newspapers shall announce the availability of the EA and where it may be obtained or reviewed.

(3) Pursuant to 40 CFR 1501.4(c) comments shall be submitted in writing to the applicant or the U.S. DOT agency within 30 days of publication of the notice of availability of the EA unless the U.S. DOT agency determines, for good cause, that a different period is warranted.

(g) When, in accordance with the public involvement procedures established pursuant to § 1420.305, a public hearing on an action evaluated in an EA is not held, the following shall occur:

(1) The applicant shall place a notice in a newspaper(s) similar to a public hearing notice at an appropriate stage of development of the action.

(2) The notice shall advise the public of the availability of the EA, state where information concerning the action may be obtained, and invite comments from all parties with an interest in the social, economic, or environmental aspects of the action.

(3) Pursuant to 40 CFR 1501.4(c) comments shall be submitted in writing to the applicant or the U.S. DOT agency within 30 days of the publication of the notice unless the U.S. DOT agency determines, for good cause, that a different period is warranted.

(h) If no significant impacts are identified, the applicant shall consider the public and agency comments received; revise the EA as appropriate; furnish the U.S. DOT agency a copy of the revised EA, the public hearing transcript, where applicable, and copies of any comments received and responses thereto; and recommend a FONSI. The revised EA shall also document compliance, to the fullest extent possible, with other related environmental laws, regulations, and executive orders applicable to the action, or provide reasonable assurance that the requirements will be met. Full compliance with the transportation conformity rule (40 CFR parts 51 and 93) and the planning regulation (23 CFR part 1410) is required before completion of the FONSI.

(i) If, at any point in the EA process, the U.S. DOT agency determines that the action is likely to have a significant

impact on the environment, the preparation of an EIS will be required.

(j) Any action which normally would be classified as an EA but could involve unusual circumstances, such as, substantial controversy on community impact and/or environmental grounds, will require the U.S. DOT agency, in cooperation with the applicant, to determine if the EA is the appropriate level of documentation.

#### **§ 1420.315 Findings of no significant impact.**

(a) The U.S. DOT agency will review the EA and other documents submitted pursuant to § 1420.313 (e.g., copies of any hearing transcript and written comments, and the applicant's responses). If the U.S. DOT agency agrees with the applicant's recommendation of a FONSI, it will make such finding in writing and incorporate by reference the EA and any other related documentation.

(b) Pursuant to 40 CFR 1501.4(e)(2), for proposed actions which are either similar to ones normally requiring an EIS or are without precedent and the U.S. DOT agency is processing the action with an EA and expects to issue a FONSI, copies of the EA and proposed FONSI shall be made available for review by the public and affected units of government for a minimum of 30 days before the U.S. DOT agency makes its final decision. This public availability shall be announced by a notice similar to a public hearing notice.

(c) After a FONSI has been made by the U.S. DOT agency, a notice of availability of the FONSI shall be sent by the applicant to the affected units of Federal, State and local government, and the document shall be available from the applicant and the U.S. DOT agency upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(d) Where substantial changes are made to the project and/or its potential impacts after the public review period for the EA, the applicant, pursuant to § 1420.323(c), shall make copies of the revised EA and the FONSI available for review by the public and affected units of government for a minimum of 30 days before the U.S. DOT agency makes its final decision, unless the U.S. DOT agency determines, for good cause, that a different period is warranted.

(e) If another Federal agency has issued a FONSI on an action which includes an element proposed for U.S. DOT agency action, the U.S. DOT agency will evaluate the other agency's EA/FONSI. If the U.S. DOT agency

determines that this element of the action and its environmental impacts have been adequately identified and assessed, the U.S. DOT agency will issue its own FONSI in accordance with paragraphs (a), (b), (c) and (d) of this section, incorporating the other agency's FONSI and any other related documentation. If environmental issues have not been adequately identified and assessed, the U.S. DOT agency will require appropriate environmental studies to complete the assessment.

#### **§ 1420.317 Draft environmental impact statements.**

(a) A draft EIS shall be prepared when the U.S. DOT agency determines that the action(s) is likely to cause significant impacts on the environment or if the preparation of an EIS is otherwise appropriate. When the decision has been made by the U.S. DOT agency to prepare an EIS, the U.S. DOT agency will publish a Notice of Intent (40 CFR 1508.22) in the *Federal Register*. Applicants must announce the intent to prepare an EIS by appropriate means at the local level in accordance with the public involvement procedures established pursuant to § 1420.305.

(b) The U.S. DOT agency, in cooperation with the applicant, will publish the Notice of Intent and begin a scoping process to establish the scope of the draft EIS and the work necessary for its preparation. The documented results of the planning process relevant to the action, including the public involvement and interagency coordination that has occurred, must be considered in scoping. Scoping is normally achieved through the actions taken to comply with the public involvement procedures and interagency coordination required by §§ 1420.303 and 1420.305. The scoping process will: Review the range of alternatives and impacts and the major issues to be addressed in the EIS; aid in determining which aspects of the proposed action have potential for social, economic, or environmental impact; help identify measures which might mitigate adverse environmental impacts; identify environmental enhancements that might aid in harmonizing the action with the surrounding community; identify other environmental review and coordination requirements that must be performed concurrently with the EIS preparation; and achieve the other objectives of 40 CFR 1501.7 and environmental streamlining (§ 1420.203). If a public scoping meeting is to be held, it must be announced in the U.S. DOT agency's Notice of Intent and by an appropriate means at the local level.

(c) The draft EIS shall be prepared by the U.S. DOT agency in cooperation with the applicant or, where permitted by 40 CFR 1506.5, by the applicant with appropriate guidance and participation by the U.S. DOT agency. The draft EIS shall evaluate all reasonable alternatives and may rely on information developed in accordance with 23 CFR part 1410. The draft EIS shall discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall evaluate the social, economic, and environmental impacts of the proposed action, reasonable alternatives that would avoid or reduce adverse impacts, measures which would mitigate adverse impacts, and environmental enhancements that would aid in harmonizing the action with the surrounding community. Alternatives must be sufficiently well-defined to allow full evaluation of the specific alignment and design variations that would avoid or minimize adverse impacts. The draft EIS shall summarize the public involvement and interagency coordination to the time of its approval. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by other related environmental laws, regulations, and executive orders to the extent appropriate at this stage in the environmental process.

(d) The U.S. DOT agency, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet.

(e) A lead, joint lead, or a cooperating agency shall be responsible for printing and distributing the draft EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requests for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with U.S. DOT agency concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy and also must be informed of the nearest location where the draft EIS may be reviewed without charge.

(f) The draft EIS shall be circulated for comment by the applicant on behalf of the U.S. DOT agency. The draft EIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR 1506.9. The draft EIS shall be transmitted to the following:

(1) Public officials, interest groups, and members of the public known to

have an interest in the proposed action or alternatives;

(2) Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) Neighboring States and Federal land management entities which may be affected by any of the alternatives.

(g) Public hearing requirements are to be carried out in accordance with the provisions of § 1420.305 and this section. Whenever a public hearing is held, the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS shall be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing is not held, a notice shall be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(h) Through the U.S. Environmental Protection Agency's notice of availability (40 CFR 1506.10), the U.S. DOT agency shall establish a period of not less than 45 days for the receipt of comments on the draft EIS. The draft EIS or a transmittal letter sent with each copy of the draft EIS shall identify where comments are to be sent and when the comment period ends.

#### **§ 1420.319 Final environmental impact statements.**

(a)(1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the U.S. DOT agency in cooperation with the applicant or, where permitted by 40 CFR 1506.5, by the applicant with appropriate guidance and participation by the U.S. DOT agency. Preparation of the final EIS will involve such additional public involvement, interagency coordination, and engineering or environmental studies as are necessary to consider the appropriateness of refinements in the alternatives and the incorporation of mitigation measures and environmental enhancements in response to comments received on the draft EIS.

(2) Every reasonable effort shall be made to resolve interagency disagreements on actions before processing the final EIS. If major issues remain unresolved, the final EIS shall identify those issues and the coordination and other efforts made to resolve them.

(3) The final EIS shall evaluate all reasonable alternatives considered and identify the preferred alternative. It shall also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement and interagency coordination, and describe the environmental design features, including mitigation measures and environmental enhancements, that are incorporated into the proposed action. Environmental design features or other mitigation measures presented as commitments in the final EIS shall be incorporated into the action. The final EIS shall also document compliance with other related environmental laws, regulations, and executive orders applicable to the action, and, if full compliance is not possible, provide reasonable assurance that the requirements will be met.

(b) The U.S. DOT agency will indicate approval of the final EIS by signing and dating the cover page. Approval of the final EIS does not commit the U.S. DOT agency to approve any future grant request.

(c) The initial printing of the final EIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with U.S. DOT agency concurrence, the party requesting the final EIS may be charged a fee which is not more than the actual cost of reproducing the copy and also must be informed of the nearest location where the final EIS may be reviewed without charge.

(d) The final EIS shall be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS and to anyone requesting a copy, no later than the time the document is filed with the U.S. EPA. In the case of lengthy documents, the U.S. DOT agency may allow alternative circulation processes in accordance with 40 CFR 1502.19. The applicant shall publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13<sup>2</sup> which implements Executive Order 12372. The final EIS shall be available for public review at the applicant's offices and at appropriate DOT agency offices for at least 30 days after the U.S. EPA publication of the Federal Register notice of availability. Copies should also be made available for public review at institutions such as local government

<sup>2</sup> This document is available for inspection and copying as prescribed in 49 CFR part 7.

offices, libraries, and schools, as appropriate.

#### § 1420.321 Record of decision.

(a) The U.S. DOT agency will complete and sign a record of decision (ROD) no sooner than 30 days after the U.S. EPA publication in the **Federal Register** of the notice of availability for the final EIS or 90 days after the U.S. EPA publication of the notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures and environmental enhancements that have been incorporated into the action, and document any required section 4(f) approval in accordance with 23 CFR part 1430. Until the ROD has been signed, no further approvals relative to the action may be given except those for administrative activities taken to secure further project funding and for other activities consistent with the limitation on actions in 40 CFR 1506.1. The applicant, in coordination with the U.S. DOT agency shall publish a notice of availability of the ROD for public review in a newspaper of general circulation, and, to the extent practicable, provide the approved ROD to all persons, organizations, and agencies that received a copy of the final EIS pursuant to § 1420.319(d).

(b) After issuance of a ROD, the U.S. DOT agency shall issue a revised ROD if it wishes to approve an alternative which was not identified as the preferred alternative but was fully evaluated in the final EIS or proposes to make substantial changes to the mitigation measures or findings discussed in the original ROD. Before issuing the revised ROD, the U.S. DOT agency shall consider whether additional notification, interagency coordination, and public involvement are needed in accordance with § 1420.303 and § 1420.305. To the extent practicable the approved revised ROD shall be provided to all persons, organizations and agencies that received a copy of the Final EIS pursuant to § 1420.319(d).

(c) Upon approval of the ROD, the mitigation and environmental enhancements in the final EIS associated with the alternative selected in the ROD become enforceable conditions of any subsequent grant related to the action or other DOT agency approval of the action. The U.S. DOT agency will ensure implementation of mitigation and environmental enhancements as described in § 1420.113.

#### § 1420.323 Re-evaluations.

(a) A written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the U.S. DOT agency if a final EIS is not approved by the U.S. DOT agency within three years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether a supplement to the draft EIS or a new draft EIS is needed.

(b) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major DOT agency approval or grant.

(c) After approval of the EIS, FONSI, or CE designation, the applicant shall consult with the U.S. DOT agency prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested U.S. DOT action. These consultations will be documented when determined necessary by the U.S. DOT agency.

(d) A re-evaluation under this section shall include additional notification, interagency coordination, and public involvement as appropriate in accordance with § 1420.303 and § 1420.305.

#### § 1420.325 Supplemental environmental impact statements.

(a) A draft EIS or final EIS may be supplemented whenever the U.S. DOT agency determines that supplementation would improve decisionmaking, better inform the agency or the public, or serve other purposes. An EIS shall be supplemented whenever the U.S. DOT agency determines that:

(1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS.

(2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) A supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in the actual lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts

that are significant and were not evaluated in the EIS; or

(2) The U.S. DOT agency decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a ROD shall be prepared and circulated in accordance with § 1420.321.

(c) Where the U.S. DOT agency is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the U.S. DOT agency deems appropriate, an EA to assess the impacts of the changes, new information, or new circumstances. If, based upon the studies, the U.S. DOT agency determines that a supplemental EIS is not necessary, the U.S. DOT agency shall so indicate in the project file.

(d) A supplement is to be developed using the same process and format (i.e., draft EIS, final EIS, and ROD) as an original EIS, except that scoping is not required. Public involvement and interagency coordination commensurate with the nature and scope of the supplemental EIS shall be conducted in accordance with § 1420.305 and the public involvement procedures developed thereunder.

(e) In some cases, a supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental EIS shall not necessarily prevent the granting of new approvals; require the withdrawal of previous approvals; or require the suspension of project activities for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a new evaluation of the entire action, or more than a limited portion of the overall action, the U.S. DOT agency shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental EIS is completed.

#### Subpart D—Definitions

##### § 1420.401 Terms defined elsewhere.

The definitions contained in the CEQ regulation (40 CFR 1508) and in titles 23 (23 U.S.C. 101) and 49 of the United States Code (49 U.S.C. 14202) are applicable except as modified in § 1420.403.

**§ 1420.403 Terms defined in this part.**

The following definitions apply to this part and to part 1430 of this chapter:

**Action** means a surface transportation infrastructure or service investment (e.g., highway, transit, railroad, or mixed mode) proposed for direct implementation by the U.S. DOT agency or for the U.S. DOT agency financial assistance; and other activities, such as, joint or multiple use of right-of-way, changes in access control, that require a U.S. DOT agency approval or permit, but may or may not involve a commitment of Federal funds; and other FHWA or FTA program decisions, such as, promulgation of regulations and approval of programs, unless specifically defined by statute or regulation as not being an action.

**Applicant** means the Federal, State or local governmental authority that the U.S. DOT agency works with to conduct environmental studies and prepare environmental documents. For transportation actions implemented by the Federal government on Federal lands, the U.S. DOT agency or the Federal land management agency will take on the responsibilities of the applicant described herein.

**Environmental enhancement** means a measure which contributes to blending the proposed project harmoniously with its surrounding human communities and the natural environment and extends beyond those measures necessary to mitigate the specific adverse impacts resulting from a proposed transportation action. This includes measures eligible for Federal funding, such as transportation enhancement activities or transit enhancements, and measures funded by the applicant or by others.

**Environmental studies** means the investigations of potential social, economic, or environmental impacts conducted:

- (1) As part of the metropolitan or statewide transportation planning process under 23 CFR part 1410,
- (2) To determine the NEPA class of action and scope of analysis, and/or
- (3) To provide information to be included in a NEPA decision process.

**Hardship acquisition** means the early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his/her property. This is justified when the property owner can document on the basis of health, safety, or financial reasons that remaining in the property poses an undue hardship compared to others.

**Planning process** means the process of developing metropolitan and statewide transportation plans and programs in accordance with 23 CFR part 1410.

**Protective acquisition** means the purchase of land to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

**Section 4(f)** means the provision in law which provides protection to certain public lands and all historic properties (now codified in 49 U.S.C. 303 and 23 U.S.C. 138).

**Transportation conformity** means the process for assuring or conformity of transportation projects, programs, and plans with the purpose of State plans for attainment and maintenance of air quality standards under the U.S. EPA regulation at 40 CFR parts 51 and 93. The process applies only to areas designated as nonattainment or maintenance for a transportation related pollutant.

**U.S. DOT agency** means the FHWA, the FTA, or the FHWA and the FTA together. In addition, U.S. DOT agency refers to any other agency within the U.S. Department of Transportation that uses this part as provided for in § 1420.209.

**U.S. DOT agency approval** means the approval by FHWA/FTA of the applicant's request relative to an action. The applicant's request may be for Federal financial assistance, or it may be for some other U.S. DOT agency approval that does not involve a commitment of Federal funds.

## **PART 1430—PROTECTION OF PUBLIC PARKS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES**

Sec.

- 1430.101 Purpose.
- 1430.103 Mandate.
- 1430.105 Applicability.
- 1430.107 Use of land.
- 1430.109 Significance of the section 4(f) resource.
- 1430.111 Exceptions.
- 1430.113 Section 4(f) evaluations and determinations under the NEPA umbrella.
- 1430.115 Separate section 4(f) evaluations.
- 1430.117 Programmatic section 4(f) evaluations.
- 1430.119 Linkage with transportation planning.
- 1430.121 Definitions.

Authority: 23 U.S.C. 138 and 315; 49 U.S.C. 303; 49 CFR 1.48 and 1.51.

**§ 1430.101 Purpose.**

The purpose of this part is to implement 49 U.S.C. 303 and 23 U.S.C. 138 which were originally enacted as section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as section 4(f).

**§ 1430.103 Mandate.**

(a) The U.S. DOT agency may approve a transportation project that uses publicly owned land from a significant public park, recreation area, or wildlife and waterfowl refuge, or any land from a significant historic site only if the U.S. DOT agency has determined that:

(1) There is no feasible and prudent alternative to the use of land from the property; and

(2) The project includes all possible planning to minimize harm to the property resulting from such use.

(b) [Reserved]

**§ 1430.105 Applicability.**

(a) This part applies to transportation projects that require an approval by the U.S. DOT agency, where the U.S. DOT agency has sufficient control and the statutory authority to condition the project or approval.

(b) The U.S. DOT agency will determine the applicability of section 4(f) in accordance with this part.

(c) This part does not apply to or alter approvals by the U.S. DOT agency made prior to the effective date of this regulation.

**§ 1430.107 Use of land.**

(a) Except as set forth in paragraph (b) of this section and § 1430.111, use of land occurs:

(1) When land is permanently incorporated into a transportation facility;

(2) When there is a temporary occupancy of land that is adverse to the statutory purpose of preserving the natural beauty of that land, as determined by the criteria in paragraph (b) of this section; or

(3) When there is a constructive use of land as determined by the criteria in paragraph (c) of this section.

(b) A temporary occupancy of land occurs when the use is so minimal that it does not constitute a use within the meaning of section 4(f) (§ 1420.403) when the following conditions are satisfied:

(1) The duration of the occupancy must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

(2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the section 4(f) resource are minimal;

(3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis;

(4) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and

(5) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

(c) A constructive use of section 4(f) land occurs when the transportation project does not incorporate land from the section 4(f) resource, but the impacts of the project on the resource due to its proximity are so severe that the activities, features, or attributes that qualify the resource for the protection of section 4(f) are substantially impaired. The U.S. DOT agencies have reviewed the following situations and have determined that constructive use occurs when:

(1) The projected noise level increase attributable to the transportation project substantially interferes with the use and enjoyment of a noise-sensitive facility that is a resource protected by section 4(f), such as hearing the performances at a public outdoor amphitheater, sleeping in the sleeping area of a public campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes;

(2) The proximity of the project to the section 4(f) resource substantially impairs aesthetic features or attributes of a resource protected by section 4(f), where such features or attributes make an important contribution to the value of the resource. For example, substantial impairment of visual or aesthetic qualities occurs where a transportation structure is located in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a park or historic site which derives its value in substantial part from its setting;

(3) The project restricts access to the section 4(f) property and, as a result, substantially diminishes the utility of the resource;

(4) The vibration impact from operation of the project substantially impairs the use of a section 4(f) resource, such as vibration levels from a rail project that are great enough to affect the structural integrity of a

historic building or substantially diminish the utility of the building; or

(5) The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes.

#### **§ 1430.109 Significance of the section 4(f) resource.**

(a) Consideration under section 4(f) is required when the Federal, State, or local officials having jurisdiction over a park, recreation area or refuge determine that the entire section 4(f) resource is significant. In the absence of such a determination, the section 4(f) land will be presumed to be significant, unless the U.S. DOT agency and the officials with jurisdiction have agreed, formally or informally, that the resource is not significant. The U.S. DOT agency will review the significance determination to assure its reasonableness.

(b) Section 4(f) applies to all properties on or eligible for the National Register of Historic Places. The U.S. DOT agency, in cooperation with the applicant, will consult with the State Historic Preservation Officer (SHPO) and appropriate local officials to identify such historic sites. Section 4(f) applies only to historic sites on or eligible for the National Register unless the U.S. DOT agency determines that the application of section 4(f) to a historic site is otherwise appropriate.

#### **§ 1430.111 Exceptions.**

(a) Consideration under section 4(f) is not required for any park road or parkway project developed in accordance with 23 U.S.C. 204.

(b) Consideration under section 4(f) is not required for trail-related projects funded through the Symms National Recreational Trails Act of 1991 (16 U.S.C. 1261).

(c) Consideration under section 4(f) is not required for "transportation enhancement activities" as defined in 23 U.S.C. 101(a) and transit enhancements as defined in 49 U.S.C. 5302(a)(15) if:

(1) The use of the section 4(f) property is solely for the purpose of preserving or enhancing the activities, features, or attributes that qualify the property for section 4(f) protection; and

(2) The Federal, State, or local official having jurisdiction over the property agrees in writing that the use is solely for the purpose of preserving or enhancing the section 4(f) activities, features, or attributes of the property

and will, in fact, accomplish this purpose.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses and are, in fact, managed for multiple uses, section 4(f) applies only to those portions of such lands which function as significant public parks, recreation areas, or wildlife refuges, or which are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife purposes or historic sites. The determination as to which lands so function or are so designated, and the significance of those lands, shall be made by the officials having jurisdiction over the lands. The determination of significance shall apply to the entire area of lands which so function or are so designated. The U.S. DOT agency will review these determinations to assure their reasonableness.

(e) Consideration under section 4(f) is not required for the restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when:

(1) Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and

(2) The SHPO has been consulted and has not objected to the U.S. DOT agency finding in paragraph (e)(1) of this section.

#### **(f) Archeological sites.**

(1) Section 4(f) applies to all archeological sites on or eligible for inclusion in the National Register, including those discovered during construction except as set forth in paragraph (f)(2) of this section. When section 4(f) requirements apply to archeological sites discovered during construction, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take into account the level of investment already made in the project. The review process, including the consultation with other agencies, will be shortened as appropriate.

(2) Section 4(f) requirements do not apply to archeological sites where the U.S. DOT agency, after consultation with the SHPO, determines that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken or where the U.S. DOT agency decides, with agreement of the SHPO, not to recover the data in the resource.



(g) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made, and determinations of significance changed, late in the development of a project. With the exception of the treatment of archeological resources in paragraph (f) of this section, the U.S. DOT agency may permit a project to proceed without consideration under section 4(f) if the property interest in the section 4(f) lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to acquisition.

(h) Constructive use normally does not occur when:

(1) Compliance with the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register of Historic Places results in an agreement of no adverse effect;

(2) The projected traffic noise levels of a proposed nearby highway project do not exceed the FHWA noise abatement criteria given in Table 1, 23 CFR part 772, or the projected operational noise levels of a proposed nearby transit project do not exceed the noise impact criteria in the FTA guidelines (Federal Transit Administration, Transit Noise and Vibration Impact Assessment, April 1995, available from the FTA offices);

(3) The projected noise levels exceed the relevant threshold in paragraph (b)(2) of this section because of high existing noise, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (3 dBA or less);

(4) A proposed transportation project will have proximity impacts on a section 4(f) property, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the U.S. DOT agency approval of a final NEPA document established the location of the project before the designation, establishment, or change in the significance of the section 4(f) property. However, if the property in question is a historic site that would be eligible for the National Register except for its age at the time that the project location is established, and construction of the project would begin after the site became eligible, then constructive use of the historic site may occur and such use must be evaluated;

(5) There are proximity impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resource are concurrently planned or developed. The following examples of such concurrent planning or development include, but are not limited to:

(i) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the section 4(f) resource; or

(ii) Designation, donation, planning or development of property by two or more governmental agencies, with jurisdiction for the potential transportation project and the section 4(f) resource, in consultation with each other;

(iii) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a resource for protection under section 4(f);

(iv) Proximity impacts will be mitigated to a condition equivalent to, or better than, that which would occur under a no-build scenario;

(v) Change in accessibility will not substantially diminish the utilization of the section 4(f) resource; or

(vi) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of the section 4(f) resource.

#### **§ 1430.113 Section 4(f) evaluations and determinations under the NEPA umbrella.**

(a) Alternatives to avoid the use of section 4(f) properties and measures to minimize harm to such land shall be developed and evaluated by the applicant in cooperation with the U.S. DOT agency. Such evaluation shall be initiated early when alternatives are under study. An alternative that avoids section 4(f) property must be preferred unless the evaluation demonstrates that there are unique problems or unusual factors associated with it, or that the cost, the social, economic, or environmental impacts, or the community disruption resulting from such alternative reach extraordinary magnitudes.

(b) In accordance with the concept of the NEPA umbrella in 23 CFR 1420.109, the section 4(f) evaluation is normally presented in the draft environmental impact statement (EIS), the environmental assessment (EA), or the categorical exclusion (CE) documentation. The evaluation may

incorporate relevant information from the planning process in accordance with § 1430.119. A separate section 4(f) evaluation may be necessary as described in section § 1430.115.

(c) The section 4(f) evaluation shall be provided for coordination and comment to the officials having jurisdiction over the section 4(f) property and to the U.S. Department of the Interior, and as appropriate to the U.S. Department of Agriculture and the U.S. Department of Housing and Urban Development. A minimum of 45 days shall be established by the U.S. DOT agency for receipt of comments.

(d) When adequate support exists for a section 4(f) determination, the discussion in the final EIS, the finding of no significant impact (FONSI), the CE documentation, or the separate section 4(f) evaluation shall specifically address the following:

(1) The reasons why the alternatives to avoid a section 4(f) property are not feasible and prudent; and

(2) All measures incorporated into the project that will be taken to minimize harm to the section 4(f) property.

(e) The U.S. DOT agency is not required to determine that there is no constructive use. However, such a determination may be made at the discretion of the U.S. DOT agency. When a constructive use determination is made, it will be based, to the extent it reasonably can, upon the following:

(1) Identification of the current activities, features, or attributes of a resource that qualify it for protection under section 4(f) and which may be sensitive to proximity impacts;

(2) An analysis of the proximity impacts of the proposed project on the section 4(f) resource. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project; and

(3) Consultation, on the above identification and analysis, with the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or historic site.

(f) For actions processed with an EIS, the U.S. DOT agency will make the section 4(f) determination either in its approval of the final EIS or in the record of decision (ROD). Where the section 4(f) approval is documented in the final EIS, the U.S. DOT agency will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property, and

proposed to be processed with a FONSI or classified as a CE, shall not proceed until the U.S. DOT agency has given notification of section 4(f) approval. For these actions, any required section 4(f) approval will be documented in the FONSI, in the CE approval, if one is provided, or in a separate section 4(f) document.

(g) The final section 4(f) evaluation will be reviewed for legal sufficiency.

**§ 1430.115 Separate section 4(f) evaluations.**

(a) Circulation of a separate section 4(f) evaluation will be required when:

(1) A proposed modification of the alignment or design would require the use of section 4(f) land after the CE, FONSI, draft EIS, or final EIS has been processed;

(2) A proposed modification of the alignment, design, or measures to minimize harm after an original section 4(f) approval, would result in a substantial increase in the use of section 4(f) land or a substantial reduction in the measures to minimize harm included in the project;

(3) The U.S. DOT agency determines, after processing the CE, FONSI, draft EIS, or final EIS that section 4(f) applies to a property; or

(4) An agency whose actions are not subject to section 4(f) requirements is the lead agency for the NEPA process on an action that involves section 4(f) property and requires a U.S. DOT agency action.

(b) If the U.S. DOT agency determines under paragraph (a) of this section or otherwise, that section 4(f) is applicable after the CE, FONSI, or ROD has been processed, the decision to prepare and circulate a section 4(f) evaluation will not necessarily require the preparation of a new or supplemental NEPA document. Where a separately circulated section 4(f) evaluation is prepared after the CE, FONSI, or ROD has been processed, such evaluation does not necessarily:

(1) Prevent the granting of new approvals;

(2) Require the withdrawal of previous approvals; or

(3) Require the suspension of project activities for any activity not affected by the new section 4(f) evaluation.

**§ 1430.117. Programmatic section 4(f) evaluations.**

The U.S. DOT agency, in consultation with the U.S. Department of the Interior and other agencies, as appropriate, may make a programmatic section 4(f) determination for a class of similar projects. Uses of section 4(f) land

covered by a programmatic section 4(f) evaluation shall be documented and coordinated as specified in the programmatic section 4(f) evaluation.

**§ 1430.119 Linkage with transportation planning.**

(a) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed during the planning process or in a tiered EIS.

(b) When a planning document or a first-tier EIS is intended to provide the basis for subsequent project development as provided in § 1420.201 and 40 CFR 1502.20, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation should be made of the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm, to the extent that the level of detail at this stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the project development process have not been precluded by decisions made at this stage. This preliminary determination is then incorporated into official planning documents or the first-tier EIS.

(c) A section 4(f) approval made when additional design details are available will include a determination that:

(1) The preliminary section 4(f) determination made pursuant to paragraph (a) remains valid; and

(2) The criteria of § 1430.103 and § 1430.113(a) have been met.

**§ 1430.121 Definitions.**

The definitions contained in 23 CFR 1420.403, 23 U.S.C. 101(a), 49 U.S.C. 5302, and 40 CFR part 1508 are applicable to this part.

**Federal Transit Administration**

**49 CFR Chapter VI**

For the reasons set forth in the preamble, the Federal Transit Administration proposes to amend chapter VI of title 49, Code of Federal Regulations, as follows:

3. Revise part 622 to read as follows:

**PART 622—NEPA AND RELATED PROCEDURES FOR TRANSPORTATION DECISIONMAKING**

**Subpart A—Purpose, Policy, and Mandate**

Sec.

622.101 Cross-reference to subpart A of 23 CFR part 1420.

**Subpart B—Program and Project Streamlining**

622.201 Cross-reference to subpart B of 23 CFR part 1420.

**Subpart C—Process and Documentation Requirements**

622.301 Cross-reference to subpart C of 23 CFR part 1420.

**Subpart D—Definitions**

622.401 Cross-reference to subpart D of 23 CFR part 1420.

Authority: 23 U.S.C. 109, 128, 134 and 138; 42 U.S.C. 2000d–2000d–4, 4321 *et seq.*, and 7401 *et seq.*; 49 U.S.C. 303, 5301(e), 5303, 5309, and 5324(b) and (c); 49 CFR 1.51.

**Subpart A—Purpose, Policy, and Mandate**

§ 622.101 Cross-reference to subpart A of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart A of 23 CFR part 1420.

**Subpart B—Program and Project Streamlining**

§ 622.201 Cross-reference to subpart B of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart B of 23 CFR part 1420.

**Subpart C—Process and Documentation Requirements**

§ 622.301 Cross-reference to subpart C of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart C of 23 CFR part 1420.

**Subpart D—Definitions**

§ 622.401 Cross-reference to subpart D of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart D of 23 CFR part 1420.

4. Add a new part 623 to read as follows:



**PART 623—PROTECTION OF PUBLIC  
PARKS, WILDLIFE AND WATERFOWL  
REFUGES, AND HISTORIC SITES**

Sec.

623.101 Cross-reference to 23 CFR part  
1430.

Authority: 49 U.S.C. 303; 49 CFR 1.51.

**§ 623.101 Cross-reference to 23 CFR part  
1430.**

The regulations for complying with 49  
U.S.C. 303 are set forth in 23 CFR part  
1430.

Issued on: May 18, 2000.

**Vincent F. Schimmoller,**  
*Acting Executive Director, Federal Highway  
Administration.*

**Nuria I. Fernandez,**  
*Acting Administrator, Federal Transit  
Administration.*

[FR Doc. 00-13022 Filed 5-19-00; 1:15 pm]

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# Federal Register

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Thursday,  
May 25, 2000

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Part V

## Department of Transportation

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Federal Highway Administration

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23 CFR Parts 655 and 940  
Intelligent Transportation System  
Architecture and Standards; Proposed  
Rule

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Parts 655 and 940**

[FHWA Docket No. FHWA-99-5899]

RIN 2125-AE65

**Intelligent Transportation System Architecture and Standards****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA proposes to implement section 5206(e) of the Transportation Equity Act for the 21st Century (TEA-21), enacted on June 9, 1998, requiring Intelligent Transportation System (ITS) projects funded through the highway trust fund to conform to the National ITS Architecture and applicable standards. Because it is highly unlikely that the entire National ITS Architecture would be fully implemented by any single metropolitan area or State, the FHWA proposes in this NPRM (the ITS Architecture NPRM) that the National ITS Architecture be used to develop a local implementation of the National ITS Architecture, which is referred to as an "ITS regional architecture." Therefore, conformance with the National ITS Architecture is defined under this proposal as development of an ITS regional architecture based on the National ITS Architecture, and the subsequent adherence of ITS projects to the ITS regional architecture. The ITS regional architecture would consist of a concept of operations and a conceptual design, which would draw from the National ITS Architecture, but would be tailored to address the local situation and ITS investment needs. The ITS regional architecture follows from the ITS integration strategy developed in another NPRM entitled "Statewide Transportation Planning; Metropolitan Transportation Planning" also published in today's **Federal Register**. In this NPRM, the FHWA proposes the use of the system engineering process and applicable standards and interoperability tests adopted by the DOT.

**DATES:** Written comments must be received on or before August 23, 2000. For dates of public information meetings see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Signed, written comments should refer to the docket number that appears at the top of this document and

must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-40, 400 Seventh Street, SW, Washington, D.C. 20590-0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard. For addresses of public information meetings see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Mr. Bob Rupert, (202) 366-2194, Office of Travel Management (HOTM-1) and Mr. Mike Freitas, (202) 366-9292, ITS Joint Program Office. For legal information: Mr. Wilbert Baccus, Office of the Chief Counsel (HCC-32), (202) 366-1346, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

Internet users may access all comments received by the US DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the **Federal Register's** home page at <http://www.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

The document may also be viewed at the DOT's ITS home page at <http://www.its.dot.gov>.

**Public Information Meetings**

The DOT will hold a series of seven public briefings within the comment period for the NPRM. The purposes of these briefings is to explain the content of the NPRM and encourage public input to the final rulemaking. The meetings will address this NPRM, a companion NPRM on the metropolitan and statewide planning process (FHWA RIN 2125-AE62; FTA RIN 2132-AA66), and the NPRM entitled, "NEPA [National Environmental Policy Act of 1969] and Related Procedures for Transportation Decisionmaking,

Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites" (NEPA/NPRM; FHWA RIN 2125-AE64; FTA RIN 2132-AA43). The meetings will be scheduled from approximately 8:00 a.m. to 5:00 p.m. at the locations listed below. Changes in the information below will be made available after the publication of this NPRM through the FHWA and the FTA websites, other public announcement avenues and the newsletters and websites of major stakeholder groups. Individuals wishing information but without access to these sources may contact the individuals listed above.

The structure of the meetings will emphasize brief presentations by the DOT staff regarding the content of the NPRMs. A period for clarifying questions will be provided. Under current statutory and regulatory provisions, the DOT staff will not be permitted to engage in a substantive dialog regarding what the content of the NPRMs and the final regulations should be. Attendees wishing to express ideas and thoughts regarding the final content of the rules should direct those comments to the docket. Briefing sites will include: Boston, MA, Auditorium, Volpe National Transportation Systems Center, 55 Broadway, June 9, 2000; Atlanta, GA, Westin Peachtree Plaza Hotel, 210 Peachtree Street, June 20, 2000; Washington, D.C., Marriott Metro Center, 775 12th Street NW, June 23, 2000; Chicago, IL, Holiday Inn Mart Plaza, 350 North Orleans Street, June 27, 2000; Denver, CO, Marriott City Center, 1701 California Street, June 30, 2000; Dallas, TX, Hyatt Regency Dallas, 300 Reunion Boulevard, July 11, 2000; and San Francisco, CA, Radisson Miyako, 1625 Post Street, July 19, 2000.

As part of the outreach process planned for these proposed rules, the FHWA/FTA will be conducting a national teleconference on June 15, 2000 from 1-4 p.m. eastern time, through the auspices of the Center for Transportation and the Environment at North Carolina State University. The teleconference will be accessible through numerous downlink locations nationwide and further information can be obtained from Katie McDermott at [kpm@unity.ncsu.edu](mailto:kpm@unity.ncsu.edu). The purpose of the teleconference is to describe the proposed new statewide and metropolitan planning, National Environmental Policy Act (NEPA) implementation, and Intelligent Transportation Systems (ITS) rules. An overview of each of the three Notices of Proposed Rulemaking (NPRMs) will be presented and the audience (remote and local) will have opportunities to ask questions and seek clarification of

FHWA/FTA proposals. By sponsoring this teleconference it is hoped that interest in the NPRMs is generated, that stakeholders will be well informed about FHWA/FTA proposals, and that interested parties will participate in the rulemaking process by submitting written suggestions, comments and concerns to the docket.

### Introduction

Section 5206(e) of the TEA-21, Public Law 105-178, 112 Stat. 107, at 457, requires ITS projects funded through the highway trust fund to conform to the National ITS Architecture, applicable or provisional standards, and protocols.

The proposed implementing regulations for this provision of law are contained in two NPRMs. The first NPRM for revisions to the Statewide and Metropolitan transportation planning processes, 23 CFR part 1410, published separately in today's **Federal Register**, contains language specific to ITS projects pertaining to implementation of section 5206(e)—§§ 1410.104 (Definition of ITS Integration Strategy), 1410.310(g) (Agreements), 1410.322(b)(11) (Plan and Integration Strategy Content), 1410.214 (a)(3), and 1410.216(c)(8) (State Transportation Improvement Program Content). The second NPRM concerning the ITS Architecture would add part 940 to subchapter K to implement section 5206(e) of TEA-21. The FHWA believes the proposed rules, 23 CFR parts 1410 and 940, would implement the legislative requirement for conforming to the national architecture and standards.

### Background

Intelligent transportation systems represent the application of information processing, communications technologies, advanced control strategies, and electronics to the field of transportation. Information technology in general is most effective and cost beneficial when systems are integrated and interoperable. The greatest benefits in terms of safety, efficiency, and costs are realized when electronic systems are systematically integrated to form a whole in which information is shared with all and systems are interoperable.

In the transportation sector, successful ITS integration and interoperability require addressing two different and yet fundamental issues; that of technical and institutional integration. "Technical integration" of electronic systems is a complex issue that requires considerable up-front planning and meticulous execution for electronic information to be stored and accessed by various parts of a system.

"Institutional integration" involves coordination between various agencies and jurisdictions to achieve seamless operations and/or interoperability. In order to achieve effective institutional integration of systems, agencies and jurisdictions must agree on the benefits of ITS and the value of being part of an integrated system. They must agree on roles, responsibilities, and shared operational strategies. Finally, they must agree on standards and, in some cases, technologies and operating procedures to ensure interoperability. In some instances, there may be multiple standards that could be implemented for a single interface. In this case, agencies will need to agree on a common standard or agree to implement a technical translator that will allow dissimilar standards to interoperate. This coordination effort is a considerable task that will happen over time, not all at once. Transportation organizations, such as, transit properties, State and local transportation agencies, and metropolitan planning organizations must be fully committed to achieving institutional integration in order for integration to be successful. The transportation agencies must also coordinate with agencies for which transportation is a key, but not a primary part of their business, such as, emergency management and law enforcement agencies.

Successfully dealing with both the technical and institutional issues requires a high-level conceptual view of the future system and careful, comprehensive planning. The framework for the system is referred to as the "architecture." The architecture defines the system components, key functions, the organizations involved, and the type of information shared between organizations and parts of the system. The architecture is, therefore, fundamental to successful system implementation, integration, and interoperability.

### The National ITS Architecture

The Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, 105 Stat. 1914, initiated Federal funding for the ITS program. The program at that time was largely focused on research and development and operational tests of technologies. A key part of the program was the development of the "National ITS Architecture." The National ITS Architecture provides a common structure for the design of ITS systems. The architecture defines the functions that could be performed to satisfy user requirements and how the various

elements of the system might connect to share information. It is not a system design, nor is it a design concept. However, it does define the framework around which multiple design approaches can be developed, each one specifically tailored to meet the needs of the user, while maintaining the benefits of a common approach. The National ITS Architecture, Version 3.0 can be obtained from the ITS Joint Program Office of the DOT in CD-ROM format and on the ITS web site <http://www.its.dot.gov>. The effort to develop a common national system architecture to guide the evolution of ITS in the United States over the next 20 years and beyond has been managed since September 1993 by the FHWA. The National ITS Architecture describes in detail what types of interfaces should exist between ITS components and how they will exchange information and work together to deliver the given ITS user service requirements. The National ITS Architecture and standards can be used to guide multi-level government and private-sector business planners in developing and deploying nationally compatible systems. By ensuring system compatibility, the DOT hopes to accelerate ITS integration nationwide and develop a strong, diverse marketplace for related products and services.

It is highly unlikely that the entire National ITS Architecture will be fully implemented by any single metropolitan area or State. For example, the National ITS Architecture contains information flows for an Automated Highway System that is unlikely to be part of most regional implementations. However, the architecture has considerable value as a framework for local governments in the development of regional architectures by identifying the many functions and information sharing opportunities that may be desired. It can assist local governments with both of the key elements—technical interoperability and institutional coordination.

The National ITS Architecture, because it aids in the development of a high-level conceptual view of a future system, can assist local governments in identifying applications that will support their future transportation needs. From an institutional coordination perspective, the National ITS Architecture helps local transportation planners to identify other stakeholders who may need to be involved and to identify potential integration opportunities. From a technical interoperability perspective, the National ITS Architecture provides a logical and physical architecture and

process specifications to guide the design of a system. The National ITS Architecture also identifies interfaces where standards may apply, further supporting interoperability.

### Transportation Equity Act for the 21st Century

As noted above, section 5206(e) of the TEA-21 requires ITS projects funded from the highway trust fund to conform to the National ITS Architecture, applicable or provisional standards, and protocols. The purpose of the statute is to accelerate the deployment of interoperable ITS systems. Use of the National ITS Architecture provides significant benefits to local transportation planners and deployers as follows:

1. The National ITS Architecture provides assistance with technical design. It saves considerable design time because physical and logical architectures are already defined.
2. Information flows and process specifications are defined in the National ITS Architecture, allowing local governments to accelerate the process of defining system functionality.
3. The architecture identifies standards that will support interoperability now and into the future, but it leaves selection of technologies to local decisionmakers.
4. The architecture provides a sound engineering framework for integrating multiple applications and services in a region.

### Transportation Planning Process

The existing transportation planning processes under titles 23 and 49, U.S.C., require a continuing, comprehensive, and coordinated approach to assessing transportation needs, evaluating a range of solutions, and providing a coordinated response through transportation investments. The TEA-21 further emphasizes operations and management of the transportation network as a key consideration in transportation planning. The transportation planning process is currently institutionalized through statewide and metropolitan planning.

Effective implementation of ITS requires careful and comprehensive planning. This notice of proposed rulemaking and the accompanying NPRM on Statewide and Metropolitan Transportation Planning, published separately in today's **Federal Register**, propose changes to 23 CFR part 1410 and explains how ITS would be integrated into the planning process. The ITS would become part of the transportation planning process through the locally defined ITS Integration

Strategy. This ITS integration strategy would guide future investment decisions and foster integration and interoperability. Developing the strategy as part of the overall transportation planning process would ensure that ITS is given appropriate consideration as a solution for future transportation needs and services.

Consequently, the DOT is issuing an NPRM (23 CFR part 1410), published separately in today's **Federal Register**, that proposes to incorporate ITS into the transportation planning process for both metropolitan and statewide planning (in addition to other changes needed to implement the TEA-21). The proposed provisions specific to ITS are set forth in 23 CFR 1410.104, 1410.214(a)(3), 1410.310(g), and 1410.322(b)(11). A summary of the proposed revisions follows:

During the development of the metropolitan and/or statewide transportation plan, if ITS applications are envisioned, the transportation plan shall address an ITS integration strategy. Provision shall be made to include participation of key operating agencies in the development of the integration strategy. The ITS integration strategy shall clearly assess existing and future ITS systems, including their functions and information sharing expectations. Planning for ITS shall produce an agreement among the Metropolitan Planning Organizations (MPOs), State DOTs, transit operators and other agencies which addresses policy and operational issues affecting the successful implementation of the ITS integration strategy. The policy statement shall address provisions to ensure ITS project interoperability, utilization of ITS related standards, and the routine operation of the projects. Further, as provided in proposed 23 CFR 1410.322 (b)(11), the transportation plan shall identify:

- (1) Major regional ITS initiatives (a program of related projects that are multi-jurisdictional and/or multi-modal),
- (2) ITS projects of a scale to affect regional integration of ITS systems, and
- (3) ITS projects that directly support national interoperability.

### Project Development Process

The ITS integration strategy that is part of the transportation plan would be general in content, articulating key policies and a vision for the planning area. More detailed conceptual designs and operational procedures, as agreed upon by key stakeholders, are necessary to support project development. This proposed rule seeks to implement this approach as part of the project

development process. There are two distinct sections to the proposal. The first deals with development of an ITS regional architecture that lays the foundation for integration in a metropolitan planning area or State. The second deals with final project design and ensuring conformance to both the ITS integration strategy and the ITS regional architecture.

### Summary of Proposed Requirements

#### 1. The ITS Regional Architecture

This NPRM on the ITS Architecture and Standards would require development of a local implementation of the National ITS Architecture referred to as an ITS regional architecture that is consistent with the ITS integration strategy. The ITS regional architecture would be tailored to meet local needs, meaning that it may not address the entire National ITS Architecture and may also address services not included by the National ITS Architecture. The ITS regional architecture may be developed either through an initial regional development effort or incrementally as major ITS investments are anticipated. In either case, the ITS regional architecture should contain a concept of operations and a conceptual design that addresses the integration of new ITS projects as they are advanced. In this context, a "region" is a geographical area that is based on local needs for sharing information and coordinating operational strategies among multiple projects. A region can be specified at a metropolitan, statewide, multi-State, or corridor level. While "regions" for ITS development may be at any geographic scale, responsibility for planning rests with either the MPO or State planning process. For ITS purposes, a region is any geographic area designated by the planning process. The responsible planning entity (MPO or State) will address the ITS region and ITS planning. Where ITS regions cross planning boundaries, they should be coordinated by the appropriate planning entities (MPOs or States). For ITS Commercial Vehicle Operation projects, the size of the region should not be smaller than a State, with consideration for multi-State, national, and international applications. A regional approach promotes integration of transportation systems. The size of the region should reflect the breadth of the integration of transportation systems and may be at a metropolitan, statewide, multi-State or corridor level.

## II. Project Development

Additionally, the proposed regulations would require that all ITS projects be developed using a system engineering process, again recommending the use of the National ITS Architecture as a resource. Project development would be based on the relevant portions of the ITS integration strategy and the ITS regional architecture which the project implements. ITS projects would be required to use applicable ITS standards that have been officially adopted by the DOT and applicable interoperability tests officially adopted by the DOT. Where multiple standards exist, it will be the responsibility of the stakeholders to determine how best to achieve the interoperability they desire.

## III. FHWA Project Oversight Procedures

The FHWA project oversight procedures would remain consistent with routine Federal-aid project oversight. Documentation of the proposed ITS requirements would be required to be included in project documents. Any changes made in project design that impact either the ITS integration strategy or the ITS regional architecture would be documented and the appropriate revisions made and agreed to in the ITS integration strategy and/or the ITS regional architecture. All ITS projects that advance to design or preliminary engineering would be required to conform to the system engineering and conformity requirements immediately upon the effective date of a final rule on the National ITS Architecture and Standards. In the event that an applicable ITS regional architecture or ITS integration strategy does not exist, the applicable portions of the National ITS Architecture would be identified and used as the basis for analysis. All requirements of this proposal would apply for two years from the effective date of a final rule. Replacement of existing systems would not be required.

## IV. Outreach Process

In the spring of 1998, the FHWA held ten nationwide outreach meetings on a proposed conceptual approach for ensuring consistency with the National ITS Architecture. These meetings were intended to generate discussion and solicit input from the perspective of many different transportation stakeholders on the feasibility of the proposed FHWA approach. Meetings were attended by representatives of Federal, State, local and regional transportation agencies, public sector agencies that rely on Federal-aid funds

for projects with ITS components, and interested parties from universities and the private sector. In general, stakeholders expressed the opinion that the interim guidance and the use of system engineering principles represent good practice. Stakeholders expressed a requirement for straightforward, unambiguous guidance that could be implemented with a minimum of additional paperwork, and largely agreed that the interim guidance met this requirement. For more information please see "National ITS Architecture Consistency Outreach Meetings: Summary Findings (1998)" which is included as part of this docket.

## Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date shown above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the FHWA docket identified above and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment closing period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

## Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has preliminarily determined that this proposed action is not a significant regulatory action under Executive Order 12866 and within the meaning of the Department of Transportation regulatory policies and procedures. This determination is based upon the regulatory assessment of the proposed rule that indicates that the annual impact of the rule would not exceed \$100 million nor would it adversely affect the economy, a sector of the economy, productivity, jobs, the environment, public health, safety, or State, local, or tribal governments.

The FHWA has prepared a preliminary regulatory evaluation (PRE) to accompany the NPRM. A copy of the PRE is included in the docket. The FHWA believes that this proposed action would implement the requirements of section 5206(e) of the TEA-21. Although this law requires ITS projects funded through the highway trust fund to conform to the National ITS Architecture, the FHWA would require development of a regional architecture consisting of a concept of

operations and a conceptual design, and would require use of the system engineering process, applicable or provisional standards, and protocols, and interoperability tests developed by the DOT. In developing the proposed rule, the FHWA has sought to allow broad discretion to those entities impacted by the rule, in levels of response and approach, that are appropriate to particular plans and projects while conforming to the requirements of TEA-21. The FHWA has considered the costs and benefits of effective implementation of ITS through careful and comprehensive planning. ITS becomes part of the transportation planning process through the locally defined ITS Integration Strategy. This ITS strategy would guide future investment decisions and foster the benefits of integration and interoperability. Developing the strategy as part of the overall transportation planning process would ensure that ITS is given appropriate consideration as a solution for future transportation needs and services.

## Costs

The total costs of this NPRM over 10 years is estimated between \$38.1 million and \$44.4 million (the net present value over 10 years is between \$22.3 million and \$31.2 million). The annual constant dollar impact is estimated to range between \$3.2 million and \$4.4 million. These 10-year cost estimates include transportation planning cost increases, to MPOs ranging from \$10.8 million to \$13.5 million, and to States from \$5.2 million to \$7.8 million. Estimated costs to implementing agencies for the development of regional architectures range between \$15.8 million and \$23.2 million.

These costs do not include additional implementation costs for individual projects as commenters found the additional cost extremely difficult to estimate. Those who responded suggested that the increased cost of project implementation over current good practice would be minimal. However, because of the limited amount of data available on the additional implementation costs for individual projects, the FHWA is seeking additional data on this issue from commenters to this NPRM.

## Benefits

The anticipated non-monetary benefits derived include savings from the avoidance of duplicative development, reduced overall development time, and earlier detection of potential incompatibilities. As with

project implementation impacts, the benefits of the NPRM are very difficult to quantify in monetary terms. It is estimated that the coordination guidance provided through implementation of the NPRM can provide savings of approximately \$150,000 to any potential entity seeking to comply with the requirements of section 5206(e) of the TEA-21 as compared with an entity having to undertake compliance individually. The costs may be offset by benefits derived from the reduction of duplicative deployments, reduced overall development time, and earlier detection of potential incompatibilities.

In order to assist the FHWA's analysis of costs and benefits for the final rule stage, the FHWA requests that commenters provide additional information on the following questions:

(1) Are there implementation costs to project designers and operators not properly represented in the present data?

(2) Are there updating and maintenance costs to any of the impacted entities not properly reflected in the present data?

A detailed discussion of how the FHWA prepared its estimates is provided in this NPRM for interested parties that are not able to review the PRE.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated, through the regulatory assessment, the effects of this action on small entities (small businesses, small organizations, and local governments) and determined that this action will not have a significant impact on small entities. Small businesses and small organizations are not subject to this NPRM, which applies to government entities only. The rule accommodates small governmental entities in two significant ways. First, the planning component of the NPRM would apply to MPOs and States. An MPO is the required transportation planning organization for an urbanized area (23 CFR part 1410). An urbanized area, as defined in 23 U.S.C. 101, has a population of 50,000 or more. Therefore small government agencies for areas having populations of less than 50,000 would not be affected. Secondly, the self-scaling aspect of the ITS Architecture NPRM would permit the compliance requirements to vary with the magnitude of the ITS requirements of the entity (small ITS projects have correspondingly small compliance documentation requirements). Small entities, primarily transit agencies,

coming within the project implementation component of the proposed rule would be accommodated through this self-scaling feature that imposes only limited requirements on small ITS activities. This same feature would also provide accommodation to MPOs that, while larger than the small entity definition of the Regulatory Flexibility Act, have only small ITS planning requirements. Accordingly, the FHWA preliminarily certifies that this proposed action would not have a significant impact on a substantial number of small entities. A copy of the analysis on the small entity impact is provided in the docket file.

#### **Unfunded Mandates Reform Act of 1995**

This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. (2 U.S.C. 1531 *et seq.*)

#### **Executive Order 13132 (Federalism)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

#### **Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### **Executive Order 12988 (Civil Justice Reform)**

This proposed action would meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not concern an environmental risk

to health or safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### **Paperwork Reduction Act**

This proposed action does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

#### **National Environmental Policy Act**

The agency has analyzed this proposed action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321), and has preliminarily determined that this proposed action would not have any effect on the quality of the environment.

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this proposed action with the Unified Agenda.

#### **List of Subjects**

##### **23 CFR Part 655**

Design standards, Grant programs-transportation, Highways and roads, Incorporation by reference, Signs and symbols, Traffic regulations.

##### **23 CFR Part 940**

Design standards, Grant programs-transportation, Highways and roads, Intelligent transportation systems.

Issued on: May 18, 2000.

Vincent F. Schimmoller,  
Acting Executive Director, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend Chapter I of title 23, Code of Federal Regulations, as set forth below:

#### **PART 655—[AMENDED]**

1. Revise the authority citation for part 655 to read as follows:

**Authority:** 23 U.S.C. 101(a), 104, 105, 109, 114, 135, 217, 315, and 402; and 49 CFR 1.48.



**Subpart D—[Removed]**

2. Remove subpart D of part 655, consisting of §§ 655.401, 655.403, 655.407, 655.409, 655.411.

3. Add a new subchapter K, consisting of part 940, to read as follows:

**SUBCHAPTER K—INTELLIGENT TRANSPORTATION SYSTEMS****PART 940—INTELLIGENT TRANSPORTATION SYSTEM ARCHITECTURE AND STANDARDS**

Sec.

940.1 Purpose.

940.3 Definitions.

940.5 Policy.

940.7 Applicability.

940.9 ITS regional architecture.

940.11 Systems engineering analysis.

940.13 Project implementation.

940.15 Project administration.

**Authority:** 23 U.S.C. 101, 109, 315, and 508; sec 5206(e), Pub. L. 105–178, 112 Stat. 457 (23 U.S.C. 502 note); and 49 CFR 1.48.

**§ 940.1 Purpose.**

The purpose of this regulation is to provide policies and procedures relating to the Federal-aid requirements for intelligent transportation systems (ITS) projects funded through the highway trust fund.

**§ 940.3 Definitions.**

*ITS integration strategy* means a systematic plan for coordinating and implementing ITS investments funded with highway trust funds to achieve an integrated regional transportation system.

*ITS project* means any project that in whole or in part funds the acquisition of technologies or systems of technologies (e.g. computer hardware or software, traffic control devices, communications link, fare payment system, automatic vehicle location system, etc.) that provide or contribute to the provision of one or more ITS user services as defined in the National ITS Architecture.

*ITS regional architecture* means a regional framework for ensuring institutional agreement and technical integration for the implementation of projects or groups of projects under an ITS integration strategy.

*National ITS Architecture* (also “national architecture”) means a common framework for ITS interoperability. The National ITS Architecture comprises the logical architecture and physical architecture which satisfy a defined set of user services. All of these documents are controlled by the FHWA, and are updated on an as-needed basis. New versions of the documents, when they

are issued, will be available from the FHWA in hard copy and electronic format on the DOT web site at <http://www.its.dot.gov>.

*Region* is the geographical area that is based on local needs for sharing information and coordinating operational strategies in order to address transportation problems. The size of the region should be chosen to optimize integration of transportation systems by fostering the exchange of information on operating conditions across ITS systems and across a number of agencies and jurisdictions.

*Systems engineering* is the process to arrive at a final design of a system which is selected from a number of alternatives that would accomplish the same objectives. As in most disciplines, there are usually a number of technical solutions to a set of requirements. This process considers the total life cycle of the project in the evaluation of alternatives including not only the technical merit of potential solutions, but also the costs and relative value of the alternatives that are responsive to the needs of the customer.

**§ 940.5 Policy.**

The ITS projects shall conform to the National ITS Architecture and standards in accordance with the regulations contained in 23 CFR part 1410. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture in developing a local implementation of the National ITS Architecture, referred to as an ITS regional architecture, and the subsequent adherence of all ITS projects to that ITS regional architecture. Development of the ITS regional architecture begins with the transportation planning process and the development of an ITS integration strategy for Statewide and Metropolitan Transportation Planning.

**§ 940.7 Applicability.**

All ITS projects that are funded in whole or in part with the highway trust fund are subject to these provisions.

**§ 940.9 ITS regional architecture.**

(a) An ITS regional architecture shall be developed for implementing the ITS integration strategy as provided in 23 CFR 1410.214(a)(3) and 1410.322(b)(11) to guide the development of specific projects and programs. The ITS regional architecture shall conform with the applicable ITS integration strategy. The National ITS Architecture shall be used as a resource in the development of the ITS regional architecture.

(b) The ITS regional architecture may be developed either as an initial project

development effort and updated as projects are initiated, or the ITS regional architecture may be developed incrementally as major ITS investments are initiated and updated with subsequent projects. In either case, provision shall be made to include participation from all agencies with which information-sharing is planned as specified in the ITS integration strategy.

(c) The ITS regional architecture shall include, at a minimum, the following:

(1) A “concept of operations” that addresses the roles and responsibilities of participating agencies, existing or required agreements for operations, and resources required to support the project, in order to implement the ITS integration strategy;

(2) A “conceptual design” sufficient to support subsequent project design regarding the following:

(i) System functional requirements;

(ii) Interface requirements and information exchanges with planned and existing systems and subsystems (for example, subsystems and architecture flows as defined in the National ITS Architecture);

(iii) Identification of key standards supporting regional and national interoperability, including uniformity and compatibility of equipment, practices and procedures to deliver ITS services; and

(iv) A prioritization of phases or steps required in implementation.

(d) The ITS regional architecture may be developed either as an initial project development effort and updated as projects are initiated, or the ITS regional architecture may be developed incrementally as major ITS investments are initiated and updated with subsequent projects. If the ITS regional architecture is developed incrementally, the ITS projects meeting the criteria specified in 23 CFR 1410.322(b)(11) shall have an ITS architecture at the project level in order to advance to design or preliminary engineering. The ITS architectures developed for specific individual projects or initiatives that meet these criteria shall be coordinated with each other to form an ITS regional architecture.

**§ 940.11 Systems engineering analysis.**

(a) All ITS projects shall be based on a systems engineering analysis. The National ITS Architecture is a resource that should be used in the development of ITS projects.

(b) The analysis should be on a scale commensurate with the project scope. The basic elements of the analysis are as follows:

(1) Identification of applicable parts of the ITS regional architecture or ITS integration strategy;

(2) Preliminary analysis, including project objectives, existing systems resources, existing and future personnel and budget resources for operations, management and maintenance of systems;

(3) Analysis of alternative system configurations and technology options;

(4) Analysis of procurement options; and

(5) Identification of applicable standards and testing procedures, particularly those that support national interoperability.

#### **§ 940.13 Project implementation.**

(a) The project specifications shall ensure that the project accommodates the sharing of electronic information and provides for the functionality and operation (both at the time of project implementation and in the future) between the agencies and jurisdictions as indicated in the ITS integration strategy and/or the ITS regional architecture.

(b) All ITS projects funded with highway trust funds shall use applicable ITS standards that have been officially adopted by the United States Department of Transportation (US DOT).

(c) The ITS standards that are pertinent to the project should be used as they become available, prior to adoption by the US DOT.

(d) All ITS projects funded with highway trust funds shall conduct the applicable interoperability tests that have been officially adopted by the US DOT.

(e) Interoperability tests that are pertinent to the project should be used as they become available, prior to adoption by the US DOT.

#### **§ 940.15 Project administration.**

(a) Prior to authorization of highway trust funds for construction or implementation, there shall be a demonstrated linkage to the ITS regional architecture or to the ITS integration strategy, and a commitment to the operations, management and maintenance of the overall system.

(b) Documentation of compliance with the provisions of §§ 940.11 and 940.13 shall be developed by project sponsors. The documentation shall include identification of the portions of the ITS regional architecture and/or ITS integration strategy which are implemented through the project, and the identification of applicable ITS standards and/or interoperability tests that were considered or are specified in the project. Documentation of the rationale and interagency coordination strategies that were carried out to agree upon certain changes shall be provided in the event that any changes are made in the implementation of projects contrary to the ITS regional architecture and/or the ITS integration strategy. In addition, the ITS regional architecture and/or ITS integration strategy shall be updated to reflect the changes.

(c) ITS projects shall be monitored for compliance with this part under normal Federal-aid project oversight procedures.

(d) Prior to *(two years after date of final rule publication in the Federal Register)*, the ITS architectures are not required for projects that meet any of

the criteria as specified in 23 CFR 1410.322(b)(11). The criteria identify major regional ITS initiatives, ITS projects that affect regional integration of ITS systems, and projects which directly support national interoperability.

(e) In order to ensure that each project identified in 23 CFR 1410.322(b)(11) is coordinated with the evolving regional architecture provided in § 940.9(b), these projects shall be evaluated for institutional and technical integration with transportation systems and services within the region. Based upon this evaluation of the project(s), highway trust fund recipients shall immediately take the appropriate actions to ensure that the project(s) perform the following functions:

(1) Engages a wide range of stakeholders;

(2) Enables the appropriate electronic information sharing between stakeholders;

(3) Facilitates future ITS expansion; and

(4) Uses the applicable ITS standards provided in § 940.13(b).

(f) All ITS projects that advance to design or preliminary engineering must conform with the system engineering and conformity requirements provided in §§ 940.11 on or before *(Insert effective date of final rule)*. In the event that an applicable ITS regional architecture or ITS integration strategy does not exist, the applicable portions of the National ITS Architecture shall be identified and used as the basis for analysis.

[FR Doc. 00-13023 Filed 5-19-00; 1:15 pm]

BILLING CODE 4910-22-P

# community media project

“building community through media”

## Project overview

### Purpose

Metro is working in partnership with Oregon Public Broadcasting, independent film producers, public agencies, local media and community organizations to enhance community outreach efforts on transportation issues facing the metropolitan region.

The purpose of this collaboration is to produce a pilot program on transportation and related land-use and environmental issues and to develop a media model for five years of television programming to educate the public on important issues facing Oregon and the region.

### Background

Efforts in this country and internationally have shown that media can provide a communication link between citizens and their government. It can act as a catalyst for inspiring people to become actively involved in defining and making changes within their lives that can improve the quality of life in their community. Government agencies are looking for new and innovative ways to discuss issues with the public. Public television strives to provide educational programs to assist the public in making informed choices. Independent film producers and artists are interested in becoming more involved in the issues facing their community and represent the talent base from which provocative, innovative new programming will come.

### Project phases

Phase I: Research and development – Research and recommend a media model that can be used to produce innovative television programming that will first serve to educate the public on transportation and related land-use and environmental issues in the Portland region. The model will include a proposal for linking the television program with radio, digital technology, web sites, newspapers and community outreach activities.

Phase II: Production and airing – Produce a pilot television show to be broadcast on public television and linked to other media.

Phase III: Seek long-term funding – Obtain funding for up to five years of programming. Produce five years of television programming and related media activities.

The long-term goal of the Community Media Project is to develop, fund and produce five years of public television programming that is linked with other media. This programming will address issues important to Oregonians. Not only will it educate people, it will provide them with information about what they can do to make a difference in their communities.

### For more information

Contact Pamela Peck, Metro, project manager at (503)797-1866 or by e-mail at [peckp@metro.dst.or.us](mailto:peckp@metro.dst.or.us)

Metro

Oregon Public  
Broadcasting

Port of Portland

Portland Office of  
Transportation

State of Oregon

Department of  
Environmental  
Quality

Department of  
Land Conservation  
and Development

Department of  
Transportation

Ecumenical  
Ministries of  
Oregon

Infinity  
Broadcasting  
Company

Regional Arts &  
Culture Council

Tualatin Valley  
Community  
Access

**Community Media Project  
Advisory Committee**

Pamela Peck/Mike Hoglund  
**Metro**

Steve Amen  
**Oregon Public Broadcasting**

Chris White  
**Port of Portland**

Lavinia Gordon/Mary Volm  
**Portland Office of Transportation**

Nina DeConcini/Elizabeth Vowels  
**Oregon Department of Environmental Quality**

Pamela Kambur  
**Oregon Department of Land Conservation and Development**

Ron Scheele  
**Oregon Department of Transportation Region 1**

Jenny Holmes  
**Ecumenical Ministries of Oregon**

Stanley Mak  
**Infinity Broadcasting (KKJZ/KUPL)**

Peggy Kendellen  
**Regional Arts & Culture Council**

Patricia Dair  
**Tualatin Valley Community Access**

# **Community Media Project Schedule**

## **Phase 1**

April 2000

Intergovernmental agreement between Metro and ODOT finalized to secure federal funds

May 2000

Kick-off Advisory Committee meeting

June 2000

Agreements with local governments for project match and support finalized  
Contract for consultant services for Phase 1 support  
Research on models for producing community-based programming begins

July 2000

Advisory Committee meets

August 2000

Filmmaker and artists focus group  
Advisory Committee meets

September 2000

Community focus groups  
Advisory Committee meets

October 2000

Interim recommendation on issues to be discussed and preferred video techniques  
Advisory Committee meets and considers consultants recommendation

November 2000

Develop Phase 2 work program to direct production and distribution efforts  
Develop request for proposals (RFP) for services related to phase 2 activities

## **Phase 2**

January 2001

Contract or contracts for services related to phase 2 activities

July 2001

Final edited version of pilot program  
Up to 200 copies for distribution

Fall 2001

Pilot airs on OPB  
Report evaluating the success of the program

## **Community Media Project Key Interviews**

*We need media programs to help us to develop a sense of Oregon--A sense of place. We need to not lose touch with the special place Oregon is--many people are moving here that didn't grow up here and don't have the same sense of place. People now come for jobs-- they didn't move here like they did in the 60's to ride their bikes, or for their love of mountains and rivers--now they are coming here because it is a city, you can get a job. We need powerful stories to remind us of why we are here--this goes for the old timers, too. These powerful stories need to get to the masses and they have to be told in a way that each one of us can actually see how we can get involved.*

- comments recorded during a key interview conducted by the Community Media Project

### **Interviews conducted**

Earl Blumenauer, U.S. Representative  
Ethan Seltzer, Director Institute of Metropolitan Studies  
Pam Brown, Portland Public Schools  
Greg Kantor, NW Natural Gas  
Stan Amy, former owner of Nature's  
Adam Davis, Davis & Hibbitts  
Melissa Torres, Lung Association  
Charlene MacDonald, Meyer Memorial Trust  
Carl Flipper, Humboldt Neighborhood Association  
Kim Stafford, writer

### **Interviews scheduled**

Susan McLaughlin, Oregon Community Foundation  
Kit Gillem, Murdock Foundation

### **Interviews in process of scheduling**

Ursula LeGuin, writer  
Barry Lopez, writer  
Craig Lesley, writer  
Governor Kitzhaber  
Steve Schneider, former director Center for Urban Education  
James A. Zehren, Metro Transportation Adv

### **Interviews to be scheduled**

Roslyn Hill, Artist, business owner  
Elizabeth Woody, poet, EcoTrust Director  
Jonah Adelman, National Stand For Children, Community Organizer  
Maxine Fitzpatrick, Director Portland Community Reinvestment Inc. CDC  
Jeff Allen, Oregon Environmental Council  
Hector MacPherson, DLCD  
Young people

**Possible interviews to be conducted to ask people to react to specific ideas/vision**

Don Weiden, Weiden & Kennedy

Gus Van Zant

Boyd Levet

John Lindsey, OPB

Donna Reed, Multnomah County Library

**Next Steps:**

*There should be frequent and sustained reporting on the best thinking from our young people. Their opinions matter. They will inherit what today's decision-makers create--or destroy. The powerful among us need to hear from the young, and the young need to see that their opinions matter. Without idealism, we are doomed to cultural attrition fueled by greed.* - Kim Stafford, views expressed in an interview for the Community Media Project.

1. Expand list of those to be interviewed to include: young people, people of color, people representing the environmental movement, and people representing community development efforts in the neighborhoods.
2. Edit interviews into a short video.
3. Use information from videos to help guide the development of the recommended model.

**Community Media Project Key Interview Questions**

1. What do you think are the key issues facing Oregon?
2. How do you feel media can be used to help broaden the community dialogue on transportation, growth management, and environmental issues within a context of community values and a call to action?
3. What are some examples where you feel media "works" in creating a feeling of place/community?
4. What do you see as the shortcomings in the way media is used to create community?
5. How do you think artists can involve the community in the creation of local programming that both reflects the community and creates ownership in the issues?
6. Any other thoughts on how we might build community through media?



## COMMUNITY MEDIA PROJECT

### FOCUS GROUP ARTIST/FILMMAKER

Those attending - 16	Couldn't make it, interested in being involved - 12
Jim Blashfield, filmmaker	Scott Becker, filmmaker
Larry Johnson, filmmaker	Chel White, filmmaker
Trevor Fife, filmmaker	Martha Gies, writer
Gil Dennis, screenwriter	Barbara La Morticella, writer
Carol Sherman, filmmaker	Susan Halprin, writer
Susan Arbuthnot, filmmaker	Kirsty Munn, visual artist
Randy Gragg, arts critic	Valarie Otani, visual artist
Henk Pander, painter	Mary Kay Guth, sculptor
Julie Keefe, photographer	Linda Johnson, dancer
Richard Brown, photographer	Susan Banyas, story teller
Richard Wilhelm, photographer	Susan Addy, musician
James Harrison, visual artist	Janice Scroggins, singer
Claire Stock, website developer	
Greg Haun, website developer	
Carol Triffle, IMAGO theatre	
Scott Crabtree, musician, multi-media children's educational software	



**METRO**

**Creating  
livable communities**

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**Metro – planning that  
protects the nature of  
our region**

It's better to plan for growth than ignore it. Metro serves 1.3 million people who live in Clackamas, Multnomah and Washington counties and the 24 cities in the Portland metropolitan area. Metro provides transportation and land-use planning services and oversees regional garbage disposal and recycling and waste reduction programs. Metro manages regional parks and greenspaces and the Oregon Zoo, and oversees the trade, spectator and arts centers managed by the Metropolitan Exposition-Recreation Commission.

Metro is governed by an executive officer, elected regionwide, and a seven-member council elected by districts. An auditor, also elected regionwide, reviews Metro's operations.

Executive Officer – Mike Burton; Auditor – Alexis Dow, CPA; Council: Presiding Officer – David Bragdon, District 7; Deputy Presiding Officer – Ed Washington, District 5; Rod Park, District 1; Bill Atherton, District 2; Jon Kvistad, District 3; Susan Cain, District 4; Rod Monroe, District 6.

Metro's web site:  
[www.metro-region.org](http://www.metro-region.org)

# 2000 Regional Transportation Plan (RTP) moving toward completion

## Metro's 2000 RTP Gets Adopted

On August 10, 2000 the Metro Council unanimously adopted a new 20-year transportation plan for the Portland metropolitan region. This plan is a "living" document, subject to continual review, and is updated periodically to reflect changing conditions and new planning priorities. The new plan represents a nearly 20-year evolution from a mostly road-oriented plan to a more balanced multi-modal plan that is closely tied to land use and the 2040 Growth Concept.

Development of this plan occurred during the past five years and was guided by input from a 21-member citizen advisory committee, from local officials and staff of the region's cities and counties, and from residents, community groups and businesses throughout the region. Of the more than 700 projects proposed, more than half are new to the plan, and many were generated from citizen input.

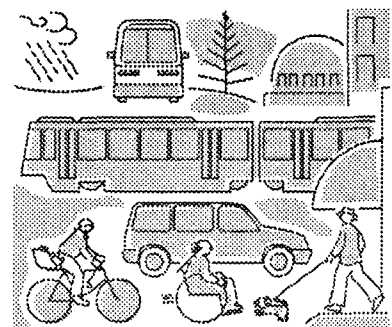
The plan lays out the priority projects for roads and freight movement as well as alternative transportation options such as bicycling, transit and walking and a funding strategy to guide implementation of the plan. The plan is based on forecasts of growth in population, households and employment as well as future travel patterns and analysis of travel conditions. It also considers estimates of federal, state and local funding which will be available for transportation improvements.

## 2000 RTP Compliance with Air Quality Conformity

Metro must demonstrate that the 2000 Regional Transportation Plan (RTP) meets federal and state air quality planning requirements. The federal Clean Air Act provides the main framework for national, state, regional and local efforts to protect air quality.

During September 2000, Metro will complete a technical analysis that is known as "air quality conformity." The analysis looks at vehicle miles traveled (VMT), travel speeds and vehicle trips and their corresponding vehicle emissions as a result of expected travel demand for specific years within the 20-year plan period.

When the analysis is complete, a 30-day public comment period will be held and the results will be presented to Metro's Transportation Policy Advisory Committee (TPAC), Joint Policy Advisory Committee on Transportation (JPACT) and the Metro Council for approval.



## **2000 Regional Transportation Plan Conformity Analysis Timeline\***

### **August 21, 2000**

Notification of 2000 RTP air quality conformity process to affected governments, businesses and community groups

### **September 29, 2000**

Complete modeling and analysis for air quality conformity

### **October 6, 2000**

Begin 30-day public comment period with air quality analysis documents available

### **October 27, 2000**

Review of air quality conformity findings and tentative action by TPAC

### **November 7, 2000**

Public hearing, close of 30-day public comment period and recommendation by Metro Transportation Planning Committee

### **November 9, 2000**

Review of air quality conformity findings and tentative action by JPACT

### **November 16, 2000**

Public hearing and tentative final action by Metro Council

\* Please note that the dates in this timeline are tentative.

## **What is the purpose of a public comment period?**

The purpose of a 30-day public comment period is to allow public review of:

- the methods and analysis procedures leading to a conformity determination
- the final results of the 2000 RTP air quality conformity analysis

Given previous experience with the conformity process, it is anticipated that the 2000 RTP will meet air quality conformity requirements for all model years. If, for some reason, this does not occur, then the air quality conformity process would be extended and expanded to determine how to revise the 2000 RTP to comply with the federal Clean Air Act.

The public comment period will be advertised and another notice will be sent prior to the start of the comment period.

## **For more information**

Confirm the dates, times and locations for meetings by calling Metro's Transportation Hotline at (503) 797-1900 closer to the scheduled meeting day. Information will also be available on Metro's web site at [www.metro-region.org](http://www.metro-region.org). For more information, call Jeanna Cernazanu at (503) 797-1865.



**METRO**

## **2000 RTP Air Quality Conformity Analysis**

### **Background**

The federal Clean Air Act provides the main framework for national, state and local efforts to protect air quality. Under the Clean Air Act, the Environmental Protection Agency (EPA) is responsible for setting standards, known as national ambient air quality standards (NAAQS), for pollutants considered harmful to people and the environment. These standards are set at levels that are meant to protect the health of the most sensitive population groups, including the elderly, children and people with respiratory diseases. Air quality planning in this region is focused on meeting the NAAQS and deadlines set by the federal Environmental Protection Agency and state Department of Environmental Quality for meeting the standards. Failure to meet these standards could result in a loss of transportation funding from state and federal sources and increased health risks to the region.

The 2000 Regional Transportation Plan (RTP) is subject to an air quality conformity determination under federal regulation (40 CFR Parts 51 and 93) and state rule (OAR 340 Division 252). Metro, as the Metropolitan Planning Organization (MPO) for the Oregon portion of the Portland-Vancouver airshed, is the lead agency for the conformity determination. In addition, the Transportation Policy Alternatives Committee (TPAC) is called out under the state rule as the standing committee designated for "interagency consultation" as required by the rule. In order to demonstrate that the 2000 Regional Transportation Plan (RTP) meets federal and state air quality planning requirements, Metro must complete a technical analysis that is known as air quality conformity. The need for this analysis came from the integration of requirements in the Clean Air Act Amendments of 1990 and the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Conformity is a regulation requiring that all transportation plans and programs in air quality non-attainment or maintenance areas conform to the State's air quality plan (known as the State Implementation Plan or SIP). Transportation plans and programs such as the 2000 RTP must not delay attainment of the NAAQS, result in an area falling out of attainment, or create new violations. The air quality conformity analysis evaluates vehicle miles traveled (VMT), travel speeds and vehicle trips and their corresponding vehicle emissions as a result of expected travel demand.

### **Air Quality Conformity**

For the Oregon portion of the Portland-Vancouver airshed, emission budgets have been set for various sources of pollutants (mobile, point, area) and are included in the Ozone and Carbon Monoxide SIPs and the region's Maintenance Plan. The 2000 RTP must conform to these SIP mandated mobile emission budgets. Mobile emission budgets are set for winter carbon monoxide (CO) and for three summer ozone precursors CO, nitrogen oxides (NOx), and hydrocarbons (HC). Table 1 shows the mobile emissions budgets for the Portland-Vancouver airshed.

Table 1  
2000 RTP Mobile Emissions Budgets<sup>1</sup>

	Winter CO	Summer VOC	Summer NOx
1998			
2005	979	42	51
2010	760	40	52
2020	842	40	59

The conformity evaluation is conducted over several analysis years and a horizon year. The region's approved Maintenance Plan identifies two sets of analysis years, one set for winter CO and one set for summer ozone. The CO analysis years are 2001, 2003, 2007, 2010, and 2015. The ozone analysis years are 2001, 2003, 2006, 2010, and 2015. In addition, a plan horizon year must also be evaluated. For the 2000 RTP, the horizon year is 2020.

#### Technical Analysis and Modeling Approach

On \_\_\_\_\_, Metro and DEQ staff met and reviewed the conformity requirements. The process is technically complex and requires extensive staff and computer time and is, therefore, expensive. To the degree the rules allow, it is generally more cost-effective to fully model as few of the analysis years as possible, instead, identifying and modeling key analysis years and interpolating between them.

This approach is acceptable under the federal rule and is called out in its preamble as follows: "A regional emissions analysis must be performed for each pollutant and precursor for the last year of the transportation plan's forecast period and the attainment year. For the other years for which the budget test is required to be demonstrated, the estimate of regional emissions does not necessarily need to be based on a regional emissions analysis performed for the specific year; the estimate of regional emissions may be based on an interpolation between the years for which the regional emissions analysis was performed." The rules go on to note that the years of analysis must be no more than ten years apart.

Table 2 identifies the proposed years for full conformity analysis and for interpolation for both summer ozone and winter carbon monoxide. As proposed, the full analysis years include a 1998 base year, and 2005, 2010, and 2020. 2005 is proposed to take advantage of an existing network that has been used in previous conformity determinations. Interpolation years are proposed for 2001, 2003, 2006, 2007, and 2015.

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<sup>1</sup> Budgets are from the Maintenance Plan adopted in 1996.

Table 2  
2000 Regional Transportation Plan Conformity Analysis Years

Year	Carbon Monoxide (winter)		Ozone (summer)	
	Full Analysis	Interpolate	Full Analysis	Interpolate
1998 <sup>2</sup>	X		X	
2001		X		X
2003		X		X
2005 <sup>3</sup>	X		X	
2006				X
2007		X		
2010	X		X	
2015		X		X
2020	X		X	

For the actual analysis, air quality conformity usually requires demand model outputs such as VMT, trip ends, and network speeds. Emissions calculations are performed on a link-by-link and matrix basis for stabilized emissions and trip end emissions, respectively. As noted, a full demand model run is both computer- and labor-intensive. Metro's model requires the following inputs to be assembled or created, if not already available (for a given year):

- Population and employment forecasts
- Transit fare and parking cost data
- Transit network assumptions (PM peak, Midday; including bus routes and park & ride sheds)
- Highway network definitions (PM peak, Midday)
- Vehicle emission factors

The model run consists of the following steps:

- Trip generation
- Destination choice
- Mode choice
- Time of day identifications (AM peak, PM peak, Midday, Rest of the Day)
- Assignment of trips to the network (path choice)

In addition, air quality conformity model runs require stratification of the trips by inspection maintenance area (Oregon I/M, Washington State I/M, and Non-inspected). Once the data are assembled and the demand model steps are completed, the results are used for the calculation of emissions. Ozone and CO gases are computed, and then reported in various geographies depending on the project requirements.

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<sup>2</sup> The base year will be 1998.

<sup>3</sup> While not an analysis year, 2005 is proposed for full modeling to take advantage of the existing 2005 network used in previous conformity determinations. The network will be revised, as necessary to reflect the 2020 financially constrained system.

To summarize, full model runs (as outlined above) will be made for 1998 (a base year), 2005, 2010, and 2020. The emissions for intermediate years will be approximated using an interpolation method between full model run years. While this may not be as rigorous a process to produce emissions forecasts for intermediate years, it should provide reasonable figures for this purpose, and should not compromise the ultimate test for conformity. The interpolated results will be compared to actual emission budgets for conformity.

### **Conformity Integration with RTP Adoption**

A second key conformity issue is the integration of the conformity determination with the adoption of the 2000 RTP. Metro staff used a two-stage adoption process. Stage one was completed on August 10, 2000, with adoption of the 2000 RTP by ordinance with relevant findings that will be forwarded to the Department of Land Conservation and Development (DLCD) for acknowledgement for state planning purposes. Development of the plan occurred during the past five years and was guided by input from a 21-member citizen advisory committee, local officials and staff from the region's cities and counties, residents, community groups and businesses throughout the region. Numerous opportunities for public comment were provided during the five-year process, which concluded with a 45-day public comment period prior to adoption by ordinance. The 2000 RTP was developed to include separate layers of planned projects and programs that respond to differing federal, state and regional planning requirements. These layers are:

- the **financially constrained system**, which responds to federal planning requirements, including the air quality conformity, and is based on a financial forecast of limited funding that is "reasonably expected to be available" over the 20-year plan period
- the **strategic system**, which responds to state planning requirements, and assumes that significant new revenue must be identified in order to provide an adequate transportation system over the 20-year plan period
- the **preferred system**, which responds to regional planning policies adopted as part of the 2040 Growth Concept and Regional Framework Plan, including specific system performance measures.

Two results will come from the August 10, 2000 adoption. First, the adoption represents agreement on a final Strategic RTP that adequately balances transportation and land use as is required for transportation system plans (TSP) under the state Transportation Planning Rule (TPR). Adoption of the 2000 RTP by ordinance will allow local governments to proceed with work on their local TSPs with the understanding that the RTP policies, systems, and projects have been established. Second, the adoption represents agreement on a final set of projects that comprise a "financially constrained" plan that will be used to determine air quality conformity under federal planning requirements and be used for federal programming purposes, such as the Metropolitan Transportation Improvement Program (MTIP).

Stage two will be to adopt the 2000 RTP and air quality conformity determination by resolution. The basis for the air quality conformity will be the financially constrained system included in the 2000 RTP adopted in stage one. The stage two adoption process could not proceed until the financially constrained system project list had been adopted in stage one. Actual conformity model runs will occur in September 2000, followed by a 30-day public review and comment period in October, 2000 and adoption of the air quality



conformity determination in November, 2000. Table 3 shows the timeline for completion of the 2000 RTP air quality conformity process.

Table 3  
**2000 Regional Transportation Plan Conformity Analysis Timeline**

August 21, 2000	Notification of 2000 RTP air quality conformity process to affected governments, interested citizens, community groups
September 29	Modeling and analysis for air quality conformity complete
October 6	Begin 30-day public comment period with air quality analysis documents available
October 27	Review of air quality conformity findings and tentative action by TPAC
November 7	Public hearing, close of 30-day public comment period and recommendation by Metro Transportation Planning Committee
November 9	Review of air quality conformity findings and tentative action by JPACT
November 16	Public hearing and tentative final action by Metro Council

Following conformity approval and acknowledgement by USDOT and EPA, the region will have an updated regional transportation plan that meets all federal planning requirements and can be used for federal programming purposes, such as the Metropolitan Transportation Improvement Program (MTIP).

#### **Interim Analysis**

For informational purposes, Metro staff completed an interim conformity analysis for the horizon year (2020) of the 2000 RTP prior to adoption of the plan on August 10. While the analysis is in no way official, it illustrates that the projects and programs included in the financially constrained plan should meet air quality conformity requirements. Given previous experience with the conformity process, it is anticipated that the 2000 RTP will meet air quality conformity requirements for all model years. If, for some reason, this does not occur, then the air quality conformity process would be extended and expanded to determine how to revise the 2000 RTP to comply with the federal Clean Air Act.

#### **2000 RTP Air Quality Conformity Findings**

This section to be completed based on the results of the conformity analysis.
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# **Proposed JPACT Presentation/Message to the OTC**

## **Outline**

### **Welcome – Councilor Kvistad – 2 minutes**

### **State of the State: Fred Hansen – 5 minutes**

#### Success stories – Partnerships with ODOT:

- Elderly and Disabled transit funding
- Airport and Interstate MAX
- I-5/217
- Rail investments
- MLK Blvd.

#### RTP:

- New RTP was recently adopted
- Key features include: land use/transportation connection...
- Challenges to implementation of the RTP: finance

#### Critical Future Investments:

- Complete Westside commitments
- Freight/trade investments: Columbia/Killingsworth, Clackamas Industrial Connector, I-5 Trade Corridor
- Investments to manage transportation demand: South Corridor Transit, Washington County commuter rail; Sunrise Corridor, Tualatin Expressway
- Livable communities: Milwaukie, Linton, Portland, Forest Grove
- Maintaining infrastructure: Multnomah County bridges

### **The Challenge of Innovation: - Mayor Drake – 5 minutes**

- The Portland area is different from any other area of the state:
  - We have tight physical constraints of an urban, built environment.
  - We have new transportation efficient land use patterns that we are developing and encouraging
  - With our collective financial situation, we need to find ways to add capacity in the least cost manner.
- These differences require that both ODOT and JPACT be innovative. The greatest area of assistance that we could have from ODOT in this respect are greater levels of flexibility in design standards. This can help us build projects in a constrained urban environment, to encourage transportation efficient land use patterns, and to do so in a least cost manner.

### **Working together in the Future: Three Examples – 5 minutes each**

- Multnomah County Bridges – Sharon Kelly
- Clackamas Industrial Connector – Bill Kennemer
- I-5 Trade Corridor Study – Dave Lohman

### **Closing Remarks – Councilor Kvistad**

COMMITTEE TITLE J PACT

DATE 9-14-00

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AFFILIATION

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Andrew Gursburg

DEQ

Dave Lohman

Port of Portland

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Cities of Multnomah Co.

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